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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BROWN & WILLIAMSON TOBACCO)
CORPORATION,)
Plaintiff,)
vs.) No. 82 C 1648
WALTER JACOBSON and)
CBS, INC.)
Defendants.)

The deposition of THOMAS HUMBER, called for examination pursuant to notice and the Rules of Civil Procedure for the United States District Courts pertaining to the taking of depositions, taken in the above-entitled cause before KIMBERLY R. WINKLER and LISA A. KOTRBA, notaries public in and for the County of Cook and State of Illinois, on the 9th day of July, 1984, at the hour of 9:30 a.m., at 19 South LaSalle Street, 14th Floor, Chicago, Illinois.

PRESENT:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON
BY: MR. LEWIS R. CLAYTON
345 Park Avenue
New York, New York 10154

on behalf of the Plaintiff;

681815656

Victoria Court Reporting Services, Inc.
189 WEST MADISON STREET SUITE 402 CHICAGO, ILLINOIS 60602 443-1025

PRESENT (Cont'd)

REUBEN & PROCTOR
BY: MS. SHANE H. ANDERSON
MR. BARRY GINSBERG
19 South LaSalle Street
14th Floor
Chicago, Illinois 60606

and

SIDLEY & AUSTIN
BY: MR. HENRY L. MASON, III
One First National Plaza
Chicago, Illinois 60603

on behalf of the Defendants.

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I N D E X

WITNESS

EXAMINATION

THOMAS HUMBER

EXAMINATION

By MS. ANDERSON

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E X H I B I T S

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1 1 MS. ANDERSON: Please swear in the witness, please.

2 (Witness sworn.)

3 MS. ANDERSON: Let the record show that this is a
4 deposition of Thomas Humber taken pursuant to notice and
5 continued to this date by agreement of the parties.

6 THOMAS HUMBER,

7 called as a witness herein, having been first duly sworn,
8 was examined and testified as follows:

EXAMINATION

10 BY MS. ANDERSON:

11 Q. State your name for the record, please?

12 A. I am Thomas Humber, H-u-m-b-e-r.

13 Q. Do you have a middle initial?

14 A. It's William Thomas Humber.

15 Q. What is your address, Mr. Humber?

16 A. **REDACTED** **REDACTED**

17 Q. How old are you?

18 A. Forty-one years old.

19 Q. What is your marital

20 A. I am married.

21 Q. Is your wife

A. She is.

23 Q. And wha

24 A. She is with the Huddles.

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24 A. She is
Redacted information not available for public review
because of individual privacy concerns. VICTORI

1 Committee Senatorial campaign.

2 Q. In what capacity?

3 A. She has no title. She does a lot of different
4 things.

5 Q. Do you have children?

6 A. Yes, I do.

7 Q. How many?

8 A. I have one son, age eleven.

9 Q. Would you tell us, please, about your
10 educational background starting with college? Are you a
11 college graduate?

12 A. I am not.

13 Q. Have you ever attended college?

14 A. I have.

15 Q. Where?

16 A. I attended Oxford College at Emory University; I
17 attended Abraham Baldwin College; and I attended New York
18 University.

19 Q. Where is Abraham Baldwin?

20 A. In Tifton, Georgia.

21 Q. In what year did you attend each of those
22 colleges?

23 A. I can't recall specifically.

24 Q. Was it one year for each?

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1 A. No, I was at Emory for a year. I was at Abraham
2 Baldwin for a semester, and I was at New York University
3 for about three and a half years in night school.

4 Q. What were you studying let's say New York
5 University?

6 A. I believe my major was journalism with a minor
7 in psychology or philosophy. I can't recall exactly.

8 Q. And how about Abraham Baldwin?

9 A. I was just there taking some math courses that I
10 could not hope to pass elsewhere.

11 Q. And at Emory?

12 A. I believe I registered as an English major.

13 Q. And you did not graduate, right?

14 A. I did not.

15 Q. Have you attended any other schools or had any
16 other schooling since New York University? For example,
17 any specialized courses, any seminars?

18 A. I have attended seminars. I don't know whether
19 you would call it an institute of higher learning, but I
20 have for instance attended seminars at Stanford Research
21 Institute and public affairs council, that kind of thing.

22 Q. What kind of seminars?

23 A. Well, at Stanford Research Institute was a
24 futurist-type seminar, environment futurism, others

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1 basically dealing with public affairs, political matters,
2 and in the past seminars dealing with public journalism,
3 et cetera.

4 Q. What kind of publishing journalism seminars, if
5 you recall?

6 A. I recall attending several to do with art,
7 photography, that kind of thing.

8 Q. Anything else?

9 A. I can't recall.

10 Q. Were you in the armed forces?

11 A. I was not.

12 Q. Do you remember the date when you last attended
13 New York University?

14 A. I do not.

15 Q. Would you briefly go through your employment
16 history starting with your first full-time job?

17 A. Okay. In the early sixties I was employed at
18 Townhall in New York City.

19 Do you want just full-time employment running
20 through?

21 Q. Yes.

22 A. Okay, my next --

23 Q. Wait, well, if you give me your position.

24 A. I began as receptionist and was made assistant

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1 manager. I was there approximately four years. I was
2 next employed by Doubleday and Company in New York. I was
3 employed as a general public trainee. I became an
4 advertising copywriter and subsequently an editor of the
5 book club division.

6 Q. Do you recall the years?

7 A. No, I don't. It would be in the mid-sixties to
8 late sixties.

9 Q. And that was the editor of the book club
10 division was your last position at Doubleday?

11 A. Was my final position at Doubleday.

12 Q. And what was your next employment?

13 A. I was managing editor of Atlanta Magazine in
14 Atlanta.

15 Q. For how long?

16 A. Approximately seven months.

17 Q. And we are still in the mid-sixties now?

18 A. That would be late sixties.

19 Q. Then what was your next position?

20 A. I was managing editor of Scanlan's Monthly.

21 Q. In New York?

22 A. Yes.

23 Q. What is Scanlan's Monthly?

24 A. It was a magazine published in the late sixties.

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1 I believe '69, '70. I guess one could generally
2 characterize it as a muckraking magazine.

3 Q. What do you mean by muckraking magazine?

4 A. It was an investigative magazine predominantly.

5 Q. Did it investigate any one particular area?

6 A. No.

7 Q. Everything?

8 A. Right.

9 Q. I am sorry. What was your position?

10 A. I was managing editor.

11 Q. For how long?

12 A. Approximately eight months.

13 Q. Do you recall the date you left?

14 A. I do not.

15 Q. Are we now in the seventies yet?

16 A. Very likely 1970. Exactly -- within the '69 to
17 '70, '71 period.

18 Q. Did the Scanlan's Monthly during your tenure as
19 managing editor ever publish anything about cigarettes?

20 A. Yes.

21 Q. What?

22 A. Published an editorial the details of which I
23 can't recall, but the general tenor of which was that the
24 government should stop intruding upon the private lives of

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1 citizens.

2 Q. How does that have anything to do with
3 cigarettes?

4 A. It had to do with either the Surgeon General's
5 reports or FTC articles; I cannot recall.

6 Q. To your recollection were there any other
7 articles or pieces published in Scanlan's Monthly during
8 your tenure about cigarettes?

9 A. Not to my knowledge.

10 Q. Did you do any reporting yourself while you were
11 at Scanlan's?

12 A. Not directly, no.

13 Q. As managing editor, can you tell me briefly what
14 your duties were?

15 A. The overall management of a monthly magazine
16 including supervision of production, supervision of
17 editorial staff, art staff, all those things associated
18 with such duties.

19 I was the Number Three person on the staff.

20 There were two coeditors.

21 Q. Did you have the authority to approve or
22 disapprove any piece for publication in the magazine?

23 A. I did.

24 Q. Do you recall ever disapproving anything for

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1 publication?

2 A. No.

3 MR. CLAYTON: I just wonder why we are going down
4 this road. Why does his employment at Scanlan have
5 anything to do with this case?

6 MS. ANDERSON: I am getting some background
7 information as to his dealings with publishing with the
8 press. I am asking briefly and generally, not
9 specifically; and I plan to move on soon. So I think
10 that's -- I know you are concerned about time, but I also
11 think we have a right to inquire into this.

12 MR. CLAYTON: I am concerned about more than time in
13 that you are going through his employment history which we
14 have no objection to. You have established what he did at
15 Scanlan's and what his duties were, but I don't think it
16 is appropriate to be inquiring into the substance of
17 particular articles that he did or didn't work on. These
18 articles have nothing to do with this case, predates
19 everything that's going on here, and it's a publication
20 that I am not sure the publication exists any more and
21 certainly is not involved in this case.

22 Why do you want to know the details of specific
23 articles? That's the nature of my objection.

24 MS. ANDERSON: I am inquiring into what he has done;

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1 why he may have turned something down for publication,
2 general background information as to his expertise; and I
3 think that's a proper area of inquiry.

4 MR. CLAYTON: I think as to expertise, I think you
5 have what he did at Scanlan's, but I don't see why you
6 have to get into approvals or disapprovals of particular
7 articles.

8 You have what his duties were as managing
9 editor; that's sufficient to establish what his expertise
10 was, but I don't know if you really should be getting into
11 why did he disapprove this article or that article. I
12 don't see what that has to do with the case. I don't see
13 why we are exploring that area.

14 MS. ANDERSON: Are you instructing the witness not to
15 answer?

16 MR. CLAYTON: I would like to see what your next line
17 of questioning is. I am just saying I am thinking about
18 cutting this line off because I really think it's
19 irrelevant, and I think it's prying into former employment
20 which you don't really have a right to get into.

MS. ANDERSON: Seems to me I have a right to inquire.

22 Do we have a pending question?

23 (Record read as requested.)

24 MR. CLAYTON: I think the witness has stated while we

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1 were off the record that his answer he believes was not no
2 to that question.

3 MS. ANDERSON: To the question did you ever
4 disapprove anything for publication?

5 THE WITNESS: Are you asking me that question now,
6 did I ever disapprove anything for publication at
7 Scanlan's Monthly?

8 BY MS. ANDERSON:

9 Q. Yes.

10 A. I did.

11 Q. Do you recall what you disapproved for
12 publication?

13 A. I have been in publishing for fifteen years. I
14 have approved and disapproved countless books and
15 articles. You know, we will get into a six-hour
16 discussion if you want to go through it.

17 Q. So you have no specific recollection, is that
18 correct?

19 A. (No audible response.)

20 Q. You have to answer orally for the record.

21 A. I am sorry. No, for many reasons.

22 Q. For many reasons you have no specific
23 recollection or for many reasons you disapproved them,
24 which is your answer?

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1 A. Well, I don't recall why I disapproved. You
2 want to ask me about a specific article that was submitted
3 to Scanlan's, if I can recall I will give you an answer.
4 I was an editor. I approved and disapproved many articles
5 for many different reasons. That's my answer.

6 Q. When did you leave Scanlan's?

7 A. Again, to the best of my recollection, it would
8 have been in 1970.

9 Q. And where did you go next?

10 A. I went to Time, Inc. where I was employed as a
11 book club editor. Two specific duties, working on Sports
12 Illustrated and Fortune Book Clubs.

13 Q. When you say working on, what do you mean?

14 A. I was the editor in charge of those two book
15 clubs.

16 Q. How long were you at Time?

17 A. Best of my memory about a year and a half.

18 Q. So that takes you into 1972, '73?

19 A. Around that period, yes.

20 Q. Was part of your job to accept or reject
21 advertising at Time, Inc.?

22 MR. CLAYTON: Advertising in what?

23 MS. ANDERSON: In the Sports Illustrated or Fortune.

24 THE WITNESS: I had no relationship to the magazines.

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1 I was a book club editor. Part of my responsibility was
2 to handle the direct mail descriptions of the books chosen
3 for those clubs.

4 BY MS. ANDERSON:

5 Q. And after Time, who was your next employer?

6 A. I was employed by the Berkeley Publishing
7 Corporation in a subsidiary of GP Putnams in New York
8 City.

9 Q. What was your position there?

10 A. I was executive editor.

11 Q. What types of publications were put out by
12 Berkeley Publishing Company?

13 A. Paperback books.

14 Q. How long were you there?

15 A. Approximately two years I would say.

16 Q. Would that be until 1975?

17 A. Around there, yes.

18 Q. You have no specific recollection?

19 A. (No audible response.)

20 Q. You have to answer orally.

21 A. I'm sorry. No, I do not.

22 Q. And who was your next employer?

23 A. Well, at Berkeley I accepted a consultancy with
24 Pastimes Publications, Inc., which was the in-flight

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1 magazine published under contract to Eastern Airlines, and
2 I subsequently worked there.

3 I cannot say it's full-time employment. I spent
4 approximately two days a week. I was paid salary; and
5 also during that period I was a free lance writer and
6 editor.

7 Q. Now, you said at Berkeley you accepted this
8 consultancy?

9 A. I continued to be employed by Berkeley for a
10 time at which I was also editor-in-chief of Pastimes
11 Magazine as a consultant.

12 MR. CLAYTON: Wait until the question is actually put
13 to you before you answer.

14 THE WITNESS: Okay.

15 BY MS. ANDERSON:

16 Q. Then you left Berkeley and --

17 A. To take that job and to act as a writer.

18 Q. And so you free lanced for a while and worked
19 with --

20 A. This publication.

21 Q. For a while; how long?

22 A. Approximately two years.

23 Q. While you were free lancing, did you ever write
24 an article about cigarettes?

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1 A. I did not.

2 Q. What was your next employment? I take it now we
3 are about in 1977, is that correct?

4 A. 1977. I was employed as a special assistant to
5 Governor Julian Carroll of Kentucky.

6 Q. What were your duties as his special assistant?

7 A. I was basically involved in communications.

8 Q. Does that mean you were his press agent, his --

9 A. No, I was not.

10 Q. When you say involved in communications, can you
11 be more specific?

12 A. I had a role with regard to public relations
13 advice; I had a role with regard to the Department of
14 Public Information with which I served as a direct
15 liaison; I had a role with regard to liaison in terms of
16 communications with cabinet secretaries, many other
17 duties.

18 Q. How long were you with Governor Carroll as
19 special assistant?

20 A. I was employed for approximately two years. I,
21 however, resigned temporarily to become communications
22 director of the McBryer for Governor campaign.

23 Q. When was that?

24 A. Would have been -- it was the 1979 Democratic

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1 primary to the best of my recollection.

2 Q. And how do you spell the name of the man for
3 whom you were working?

4 A. M-c, B-r-a-y-e-r.

5 Q. You said you resigned temporarily from Governor
6 Carroll's staff. Did you then go back to work for
7 Governor Carroll after the primary?

8 A. I did, that is correct.

9 Q. For how long?

10 A. Through late fall of 1979.

11 Q. And who was your next employer?

12 A. Brown & Williamson Tobacco Corporation.

13 Q. And you have been there since late fall of '79?

14 A. That is correct.

15 Q. What was the job position for which you were
16 hired initially?

17 A. I was manager of external communications.

18 Q. In that position what were your duties?

19 A. Generally with those areas which would generally
20 come under the heading of public relations, public
21 affairs, communications.

22 Q. To whom did you report? In other words, who was
23 your immediate superior?

24 A. Director of corporate affairs.

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1 Q. What was his or her name?

2 A. Wilson W. Wyatt, Jr.

3 Q. Are you still manager of external
4 communications?

5 A. I am not.

6 Q. What is your title at the present time?

7 A. I am assistant director of corporate affairs. I
8 am also acting director of corporate affairs.

9 Q. Is Mr. Wyatt no longer director of corporate
10 affairs?

11 A. That is correct.

12 Q. Is he still employed by Brown & Williamson, do
13 you know?

14 A. He is not.

15 Q. For how long have you been acting director, Mr.
16 Humber?

17 A. I believe since the fall of '82 or '83. I can't
18 recall.

19 Q. As acting director of corporate affairs, to whom
20 do you report?

21 A. To the chairman of the company, Dr. I.W. Hughes.

22 Q. Have you been deposed before today?

23 A. I have not.

24 Q. Did you meet with anyone prior to this

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1 deposition to talk about your testimony today?

2 A. I did.

3 Q. When?

4 A. On Friday of last week.

5 Q. With whom did you meet?

6 A. With counsel.

7 Q. Mr. Clayton?

8 A. Mr. Clayton, present.

9 Q. Anyone else?

10 A. Mr. London.

11 Q. Mr. Wells?

12 A. No.

13 Q. Have you discussed your testimony with Mr.
14 Wells?

15 A. I have discussed the fact that I was giving it,
16 yes.

17 Q. When you met with Mr. Clayton and Mr. London,
18 did you review any documents?

19 A. Yes, I did.

20 Q. What documents did you review?

21 A. I reviewed the two memos that I wrote following
22 my conversations with Mr. Radutzky.

23 Q. Any other documents?

24 A. I did not.

1 Q. Have you discussed your testimony with anyone
2 other than Mr. Clayton, Mr. London, or the fact of your
3 deposition with Mr. Wells?

4 MR. CLAYTON: Object to the form of the question.
5 You understand the question?

6 THE WITNESS: No.

7 MS. ANDERSON: All right, I will rephrase it.

8 BY MS. ANDERSON:

9 Q. You have indicated that you discussed your
10 deposition testimony today with counsel. You also
11 indicated that you discussed that you were coming here to
12 be deposed with Mr. Wells?

13 A. Right.

14 Q. Other than those three people, have you
15 discussed your deposition with anyone else?

16 A. I've discussed coming here with members of my
17 department as a matter of the fact that I am going to
18 Chicago to give a deposition, and I have discussed the
19 matter with personal counsel.

20 Q. With personal counsel?

21 A. Yes.

22 Q. Who is that?

23 A. Arthur Ginsburg.

24 Q. With what firm?

1 A. Frankfurt Garbus.

2 Q. Is that in Louisville?

3 A. No, it is in New York. I also discussed it with
4 Robert F. Levine who is personal counsel.

5 Q. With whom is he?

6 A. Levine & Epstein.

7 Q. In what city?

8 A. New York.

9 Q. When did you discuss your deposition testimony
10 with Mr. Ginsburg?

11 A. Last week.

12 Q. Do you remember what date?

13 A. Friday.

14 Q. Was the discussion face to face?

15 A. Yes.

16 Q. Were you seeking legal advice from Mr. Ginsburg?

17 A. Yes.

18 Q. When did you discuss your testimony with Mr.
19 Levine?

20 A. Last week.

21 Q. On Friday also?

22 A. No.

23 Q. Do you remember what date?

24 A. No, I do not.

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1 Q. Did you have a race-to-face meeting or
2 discussion with Mr. Levine?

3 A. I did not.

4 Q. Was your discussion with Mr. Ginsburg face to
5 face?

6 MR. CLAYTON: Objection, asked and answered. I
7 believe he said that Ginsburg's discussion was face to
8 face.

9 MS. ANDERSON: I didn't recall that.

10 BY MS. ANDERSON:

11 Q. When you spoke with Mr. Levine, were you seeking
12 legal advice?

13 A. Yes, I was. I also spoke with Mr. Garbus of the
14 Frankfurt Garbus.

15 Q. Again to seek legal advice?

16 A. Yes.

17 Q. Is Mr. Clayton representing you today?

18 A. Yes.

19 Q. Other than with attorneys, have you spoken about
20 the subject matter or -- strike that -- the substance of
21 your deposition testimony today with anyone at Brown,
22 Williamson?

23 A. Only, you know, insofar as it concerned
24 discussing with my department employees the fact that I

1 was coming to Chicago to give a deposition in this case.

2 Q. And you would be absent?

3 A. And I would be absent, exactly, and where they
4 could reach me.

5 Q. How many persons are employed in the corporate
6 affairs department of Brown & Williamson excluding
7 clerical people?

8 A. You consider a secretary to be a clerical
9 person?

10 Q. Yes, for the purposes of your answer, yes.

11 A. Six, including myself.

12 Q. Who would the other five be?

13 A. Mr. Mark Ahern is manager of communications; Mr.
14 Michael Bateman is manager of minority affairs; Mrs. Carol
15 Carrithers is -- I am not sure what her exact title is,
16 she is editor and writer on our publications; Virginia
17 Thompson is a communications assistant and community
18 affairs assistant; and Ginny Hutchinson is a
19 communications assistant.

20 Q. Would you describe, generally, the duties and
21 responsibilities of the corporate affairs department at
22 Brown & Williamson?

23 A. I believe I've already done that. Basically
24 handling the public relations, public affairs and

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1 communications, functions of the company.

2 Q. Is it fair to say that the corporate affairs
3 department is that department charged with representing
4 Brown & Williamson to the public?

5 A. That is correct.

6 Q. Do members of the department give speeches?

7 A. Yes.

8 Q. To what kinds of groups or entities are such
9 speeches given?

10 A. It could range across a wide list.

11 Q. For example, within the past year have you given
12 any speeches in your official capacity as acting director
13 of corporate affairs?

14 A. In the past year, I believe I have not.

15 Q. Since you have been with the company, have you
16 given speeches?

17 A. I cannot recall giving a speech.

18 Q. Does your department issue press releases?

19 A. Yes.

20 Q. Do you approve those press releases?

21 MR. CLAYTON: Personally, you mean?

22 MS. ANDERSON: Yes.

23 THE WITNESS: Not all of them.

24 BY MS. ANDERSON:

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1 Q. Is there any policy that dictates which you
2 approve and which you don't?

3 A. I don't generally approve those dealing with
4 routine matters of personnel, et cetera, regular routine.
5 Day-to-day press releases I do not approve.

6 Q. And when you say personnel, would that be a
7 press release such as today Mr. Thomas Humber was
8 appointed acting director of the corporate affairs
9 department of Brown & Williamson; that's just a
10 hypothetical example?

11 A. That would be the type that I do not approve.

12 Q. What type would you approve?

13 A. Most others.

14 Q. Do you draft press releases?

15 A. I do.

16 Q. Now, as acting corporate affairs manager you are
17 concerned with Brown & Williamson's reputation, right?

18 A. That is correct.

19 Q. Do you agree with the statement that Brown &
20 Williamson enjoys an excellent reputation for honesty?

21 MR. CLAYTON: Shane, I just wonder if this is a
22 question which is precluded by the Judge's order? Is this
23 one of the matters which the Judge said was not relevant
24 for discovery in his April 17 order?

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1 MS. ANDERSON: I don't recall, but I am reading from
2 Paragraph 6 of your Complaint.

3 MR. CLAYTON: I know you are reading from the
4 Complaint, but I do recall he issued an order saying
5 certain things are not within the scope of discovery.

6 Before the witness answers, I don't have that
7 order with me, I'd like to take a look at it. Do you have
8 it?

9 MS. ANDERSON: Not with me. I think I can probably
10 get it.

11 MR. CLAYTON: Could you get it? I would just like to
12 take a look at it. Thank you.

13 MS. ANDERSON: Let's take a short recess while I am
14 doing this.

15 MR. CLAYTON: Fine, thank you very much.

16 (A short interruption was had
17 in the proceedings.)

18 MS. ANDERSON: Would you read the pending question,
19 please?

20 (Record read as requested.)

21 MR. CLAYTON: During the break, we have examined the
22 order which was entered by the Court I believe on --

23 MS. ANDERSON: March 19th.

24 MR. CLAYTON: -- March 19th; and as I read that order

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1 it explicitly rules out discovery on this point. So I'd
2 ask you to reconsider pointing that question.

3 MS. ANDERSON: I do not read the Judge's order as
4 ruling out discovery on the issue of the Plaintiff's
5 reputation in this matter, and would like the witness to
6 answer the question.

7 MR. CLAYTON: On the basis of the Judge's order which
8 as I read it forbids discovery into the fundamental
9 honesty, and I don't have it in front of me, any
10 uprightness or whatever the words are.

11 I am going to direct the witness not to answer
12 that question.

13 BY MS. ANDERSON:

14 Q. Mr. Humber, are you going to accept your
15 counsel's advice?

16 A. I am.

17 Q. Mr. Humber, do you agree with the statement that
18 Brown & Williamson has always conducted its business of
19 advertising and marketing Viceroy Cigarettes in a lawful
20 and proper manner?

21 MR. CLAYTON: I am going to direct the witness not to
22 answer that question on the basis of the Judge's order;
23 and if I may just look at your copy for a moment, Shane,
24 the order says, "The Court does not regard the following

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1 matters as the subject of discovery; The Plaintiff's
2 conduct of its business of advertising and marketing of
3 cigarettes in a lawful and proper manner." That's the end
4 of the quote.

5 I believe your question directly contravenes the
6 Court's order, and I will direct the witness not to
7 answer.

8 MS. ANDERSON: My question goes to the Plaintiff's
9 reputation which is, I believe, at issue in this lawsuit.

10 The Judge's order also indicated that this is at
11 March 19, 1984, and absent some additional showing, the
12 Court didn't regard certain specific matters as proper
13 subjects of discovery. The Court did not state in here
14 that the issue of Brown & Williamson's reputation is not a
15 proper matter for discovery, and I would ask that you
16 reconsider your advice to your client.

17 MR. CLAYTON: Well, if you will indicate to me what
18 additional showing you believe that the Defendants have
19 made since the date of the Court's order, I will think
20 about reconsidering.

21 Can you indicate to me what additional showing
22 has been made?

23 MS. ANDERSON: I believe that at this time I am not
24 inquiring into specific areas that are precluded or

1 indicated by the Court that as of March 19 is not a proper
2 area for inquiry.

3 I am asking about the Plaintiff's reputation in
4 the libel suit; that is always an issue.

5 MR. CLAYTON: Yes, I was just trying to clarify
6 whether you are stating or contending that some additional
7 showing has been made by the Defendant since the date of
8 that order.

9 Are you contending that?

10 MS. ANDERSON: As you know, we have not gone into
11 court on a further motion as of today's date on that
12 particular issue. Apparently, if you are going to
13 continue this line of objections, we will be forced to do
14 so. Again, I urge that you reconsider your advice to the
15 witness.

16 MR. CLAYTON: On the basis of your, I take it, to be
17 a representation that you can't point to any further
18 showing which has been made since the March 19th order
19 since as I understand it your question directly tracks the
20 language of the Court's order forbidding discovery into
21 that point, I will direct the witness not to answer that
22 question.

23 MS. ANDERSON: My question directly tracks Brown &
24 Williamson's Complaint in this matter, and, Mr. Humber,

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1 are you going to accept your counsel's advice?

2 THE WITNESS: I am.

3 MR. CLAYTON: I don't believe we are at liberty here
4 to modify the Judge's order, and it is on that basis that
5 I have directed the witness not to answer.

6 BY MS. ANDERSON:

7 Q. Is it part of your job, Mr. Humber, to help
8 protect Brown & Williamson's reputation?

9 MR. CLAYTON: Do you understand that question?

10 THE WITNESS: It's a very vague question.

11 MR. CLAYTON: If there is a question you don't
12 understand, you can ask for clarification.

13 THE WITNESS: Oh, would you clarify that question?

14 BY MS. ANDERSON:

15 Q. You testified earlier, I believe, that you are
16 concerned with Brown & Williamson's reputation?

17 MR. CLAYTON: Was that his testimony?

18 MS. ANDERSON: Yes, it was.

19 MR. CLAYTON: I believe he testified that his
20 department represents Brown & Williamson to the public.

21 MS. ANDERSON: Shall I ask the reporter to find the
22 question and answer?

23 MR. CLAYTON: If you could, I think it would be
24 helpful.

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1 MS. ANDERSON: Would you do that, please?

2 (Record read as requested.)

3 BY MS. ANDERSON:

4 Q. And I just asked is it part of your job to help
5 protect Brown & Williamson's reputation? I believe you
6 indicated that the question is a little vague, is that
7 what you said?

8 A. Yes.

9 Q. In what way?

10 MR. MASON: I think the record should reflect he
11 already answered the question before the suggestion was
12 made by counsel that he might choose to find the question
13 vague which made the witness say he found the question
14 vague.

15 MR. CLAYTON: As counsel, I don't understand the
16 question because I don't understand what you mean by
17 protect the reputation. What does it mean to protect
18 someone's reputation? That was the basis of my objection.

19 BY MS. ANDERSON:

20 Q. Is your counsel's basis for vagueness also being
21 adopted by you, Mr. Humber?

22 MR. CLAYTON: Object to the form. He may answer.

23 THE WITNESS: I am sorry. I don't know what's going
24 on.

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1 BY MS. ANDERSON:

2 Q. In other words, what about the question is vague
3 to you, Mr. Humber, because I'd like to clear it up?

4 A. Well, what do you mean by protect the reputation
5 of the company?

6 Q. Do you believe that Brown & Williamson has a
7 good reputation?

8 MR. CLAYTON: Objection, Shane, are we getting back
9 into the area that the Judge said that the reputation for
10 fundamental fairness and honesty --

11 MS. ANDERSON: Show me in the order where the Judge
12 says reputation is not an area of inquiry.

13 MR. CLAYTON: He says that moral uprightness and
14 fundamental honesty is not a subject for discovery.

15 MR. GINSBERG: It doesn't say anything about
16 reputation.

17 MR. CLAYTON: Do you have your March 14th submission
18 to the Judge in here in which you submitted issues to him?

19 MS. ANDERSON: This is his order, Lew, show me
20 where --

21 MR. CLAYTON: The order was based on --

22 MS. ANDERSON: -- where it says --

23 MR. CLAYTON: Can I see your March 14 submission
24 because this order takes certain issues which were set out

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1 in Defendant's submission, and says those are not subjects
2 for discovery.

3 MR. MASON: Off the record.

4 MR. CLAYTON: Let's stay on the record on this point.
5 I'd rather stay on the record.

6 MR. MASON: On the record. The witness already
7 testified that his job involves the reputation of the
8 company among other things. It's a simple question to ask
9 is what are his duties with respect to the company's
10 reputation. None of this has anything to do with the
11 Judge's order.

12 MR. CLAYTON: Let's take a break for a moment. I am
13 going to take another look at this order.

14 (Discussion off the record.)

15 MR. CLAYTON: Shane, I will permit him -- your last
16 question is in his opinion does the company have a good
17 reputation for honesty.

18 Why don't you read it back.

19 MS. ANDERSON: Would you repeat the pending question,
20 please.

21 (Record read as requested.)

22 MR. CLAYTON: Without waiving our right to object on
23 the basis of the Judge's order, I will permit the witness
24 to answer that question if he can.

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1 You can read the question back for him.

2 THE WITNESS: Please do.

3 (Record read as requested.)

4 THE WITNESS: To those people who know the company,
5 yes.

6 BY MS. ANDERSON:

7 Q. Are there others to whom Brown & Williamson does
8 not have a reputation?

9 MR. CLAYTON: Well, I am going to object, Shane,
10 because he said to those people who know the company. If
11 you don't know the company, how can you think that the
12 company has a good reputation?

13 MS. ANDERSON: I believe his answer suggested the
14 follow-up question.

15 BY MS. ANDERSON:

16 Q. Are there those to whom Brown & Williamson does
17 not have a good reputation, Mr. Humber?

18 MR. CLAYTON: Shane, I don't understand your question
19 because he said to those who know the company the answer
20 is yes. Are you trying to get at do people who don't know
21 the company have a belief as to its reputation?

22 MS. ANDERSON: Well, I will ask the question another
23 way.

24 BY MS. ANDERSON:

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1 Q. Are there those who don't know the company that
2 might not know Brown & Williamson has a good reputation?

3 MR. CLAYTON: I am going to object because I don't
4 understand how that's a logical possibility.

5 MS. ANDERSON: Because it seems --

6 MR. CLAYTON: You can explain it to me.

7 MS. ANDERSON: My question is susceptible to a yes or
8 no answer.

9 BY MS. ANDERSON:

10 Q. Does Brown & Williamson have a good reputation
11 and --

12 A. I answered that question.

13 Q. -- and your answer was to those who know the
14 company, yes.

15 Is it fair to say to those who don't know the
16 company Brown & Williamson does not have a good
17 reputation?

18 MR. CLAYTON: Can we go off the record for one moment
19 with your permission?

20 MS. ANDERSON: No, I'd like to stay on the record.

21 MR. CLAYTON: Fine, okay.

22 Can you answer the question, Mr. Humber?

23 THE WITNESS: I cannot.

24 MR. CLAYTON: I, frankly, don't understand the

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1 question.

2 MS. ANDERSON: All right, then we will move on to
3 another one.

4 BY MS. ANDERSON:

5 Q. Who are those who know the company?

6 MR. CLAYTON: If you know.

7 BY MS. ANDERSON:

8 Q. I don't want you to answer any question you
9 don't know, Mr. Humber.

10 A. I can't answer that question.

11 Q. So your answer to those who know the company
12 Brown & Williamson has a good reputation is what, a
13 speculative answer then?

14 MR. CLAYTON: Oh, objection, please.

15 THE WITNESS: No. I still don't understand what she
16 is asking.

17 BY MS. ANDERSON:

18 Q. Part of your job is to present Brown &
19 Williamson's image in the best possible light, is it not?

20 A. My job is to provide information to the press
21 and to the public with regard to Brown & Williamson's
22 activities, yes.

23 Q. Is the answer to my question yes?

24 A. Yes.

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1 Q. By the way, do you maintain a clipping file?

2 A. We do.

3 Q. Who maintains that?

4 A. It is maintained in our department.

5 Q. What clips go in that clipping file?

6 A. Any number.

7 Q. Do you have a clipping service?

8 A. I believe at this point we do not employ a
9 clipping service on a regular general basis in my
10 department.

11 Q. Have you prior to today employed a clipping
12 service?

13 A. We have.

14 Q. Do you remember when you stopped employing a
15 clipping service on a regular general basis?

16 A. I do not.

17 Q. In the past year?

18 A. It could have well been in the past year, in the
19 past two years.

20 Q. Do people in your department scan publications
21 for articles to include in your clipping file?

22 A. Yes.

23 Q. Is there one person with that responsibility?

24 A. No.

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1 Q. Is there one particular subject or several
2 subjects of clips that go into that clipping file?

3 A. Many.

4 Q. What are those?

5 A. Oh, virtually anything to do with tobacco or the
6 industry, general environmental areas. When I say
7 environmental, I mean generally areas, areas of issues
8 that may or may not be relevant to the industry, just many
9 areas, but, obviously, predominantly those that have
10 direct implications to the industry.

11 Q. Do you share clips with the Tobacco Institute?

12 MR. CLAYTON: What do you mean by share?

13 MS. ANDERSON: Pass them back and forth. For
14 example, send a particular clip of interest or that you
15 believe might be of interest to the Tobacco Institute
16 while they in turn would do the same for you?

17 THE WITNESS: Most of what I would -- yes, most of
18 what I would get from the Institute comes in the
19 publication of a newsletter which assimilates these
20 things, and it's infrequent in that we all get similar
21 kinds of publications, but, yes.

22 MS. ANDERSON: Lew, I'd like that clipping file
23 produced. I believe you told us that Brown & Williamson
24 had no such file. No such file has been produced, and I

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1 would like it at this time.

2 MR. CLAYTON: We have produced the files of Brown &
3 Williamson which relate to this case and relate to the
4 Viceroy allegations.

5 We clearly told you that we are not producing
6 every clipping that Brown & Williamson has. They keep
7 clippings, as the witness has testified, about all kinds
8 of areas which are relevant to the tobacco industry. I
9 don't see what that has to do with this case.

10 We haven't asked CBS for example for every
11 clipping that CBS has regarding the broadcast industry and
12 sweeps and Walter Jacobson.

13 MS. ANDERSON: I reiterate, you told us that Brown &
14 Williamson had no clipping file. I would like it
15 produced.

16 BY MS. ANDERSON:

17 Q. By the way, do you maintain a clipping file
18 about CBS?

19 MR. CLAYTON: That file we have produced, a file with
20 clippings about CBS.

21 MS. ANDERSON: Would you let the witness answer the
22 question, please, unless it's an objection.

23 MR. CLAYTON: I am stating for the record, Shane,
24 since you told us we haven't produced any documents, we

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1 produced your file in regards to the clippings regarding
2 CBS.

3 MS. ANDERSON: You produced to us more than a million
4 documents, but you told us that you had no clipping file;
5 that was an erroneous statement, apparently, and I would
6 like that file produced.

7 BY MS. ANDERSON:

8 Q. Now, Mr. Witness, is one of the clipping files
9 you maintain about CBS?

10 A. I do not know if there is a designation CBS on a
11 file. There would clearly be clippings regarding CBS in
12 some clip file.

13 Q. And for what reason would that be?

14 A. It would have to do with, again, some
15 implication that was of interest to us.

16 Q. And that would be about tobacco?

17 A. It could be about any number of things.

18 MR. CLAYTON: Was your question as to whether they
19 keep a file, a clippings file on CBS, is that what you are
20 asking?

21 MS. ANDERSON: It was.

22 MR. CLAYTON: Why don't you put that question
23 directly because I don't know.

24 MS. ANDERSON: I did, Mr. Clayton.

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1 MR. CLAYTON: Did you understand the question as to
2 whether there was a file directed to CBS? Is that the
3 subject matter of the file for clippings?

4 THE WITNESS: I understood that.

5 MR. CLAYTON: Okay, fine.

6 THE WITNESS: Yes.

7 MR. CLAYTON: And your answer is --

8 THE WITNESS: I said I did not know whether there was
9 a file designated CBS.

10 MR. MASON: We will make more progress if we don't
11 stop and retract answers which could have been listened to
12 the first time.

13 MR. CLAYTON: We will also make more progress if we
14 don't go over the questions and try to phrase them in a
15 slightly different way and go over the same material from
16 the point of view of the question.

17 MR. MASON: That has not happened.

18 MR. CLAYTON: Well, I differ on that, and I would
19 request that only one of the three counsel for the
20 Defendants conduct the examination.

21 MR. MASON: Only one of the three counsel for the
22 Defendants is conducting the examination.

23 MR. CLAYTON: I request then that the other two
24 counsel for the Defendants keep to an absolute minimum

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1 their interjections into this deposition because I think
2 that is -- excuse me, sir, but I am not through with my
3 statement, if you give me the courtesy of that because I
4 think that's a factor which is also slowing down our
5 progress.

6 MR. MASON: Excuse me, sir, but your recapitulation
7 of questions that were answered by the witness is wasting
8 all of our time; and if you will cease that, you will find
9 that my objections to your wasting all of our time will be
10 correspondingly reduced.

11 MR. CLAYTON: I would appreciate it if the
12 objections -- I don't know why Defendants are interposing
13 objections. I would appreciate if Ms. Anderson interposes
14 those objections rather than having a number of counsel
15 interposing them.

16 MR. MASON: I am not interposing an objection. I am
17 commenting that your habit of recapitulating the question
18 is wasting the time of everybody in this room.

19 MR. CLAYTON: I was using your phrase when I used the
20 word objection. I am sorry.

21 BY MS. ANDERSON:

22 Q. Mr. Humber, you indicated that clippings
23 relating to CBS would concern tobacco as well as other
24 issues. Can you tell me what other issues?

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1 MR. CLAYTON: Object to the form of the question.

2 You may answer.

3 THE WITNESS: I don't understand.

4 MR. CLAYTON: I am just objecting to the form of the
5 question. You can answer it if you understand it. I am
6 not directing you not to answer.

7 Why don't you read the question back.

8 (Record read as requested.)

9 THE WITNESS: There again, it could be something that
10 stimulated my interest that I would want to have in a
11 file.

12 BY MS. ANDERSON:

13 Q. Will you give me an example?

14 A. A report on a certain topic that I found
15 interesting. I can't recall a specific circumstance.

16 Q. Or a specific topic other than tobacco, is that
17 right?

18 A. Right, but conceivably there would be many about
19 CBS, NBC, ABC, and other things.

20 I collect a very collective grouping of
21 articles, some that are used as reference points, some
22 which are just personally interesting.

23 Q. But as you sit here today, you can't recall
24 specifically other than tobacco what -- 681815699

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1 A. NO.

2 Q. -- some of those specific topics are?

3 MR. CLAYTON: I will object to the reiteration of a
4 question as defense counsel has pointed out we shouldn't
5 do that. I will object to that, but you may answer. I
6 guess the answer is already on the record.

7 THE WITNESS: I believe I answered, but I don't even
8 remember what the question was.

9 MS. ANDERSON: Did he answer my question, Miss
10 Reporter?

11 Would you read it, please.

12 (Record read as requested.)

13 BY MS. ANDERSON:

14 Q. Does Brown & Williamson subscribe to any news
15 wire service? Do you have an AP or a UPI service in your
16 offices?

17 A. We do not.

Q. Does anyone in the company to your knowledge?

19 A. In Brown & Williamson?

20 O. Yes.

21 A. Not to my knowledge.

22 MS. ANDERSON: Mark this, please, as Humber
23 Deposition Exhibit 1.

(Exhibit No. 1 marked as

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1 requested.)

2 BY MS. ANDERSON:

3 Q. Mr. Humber, I am handing to first your counsel
4 and then to you a document that has been marked as Humber
5 Deposition Exhibit 1.

I'd like you to look at this, please, and I will
have a question or two about it.

8 MR. CLAYTON: Much better copy than we got.

9 Take as much time as you need to examine the
10 document.

11 THE WITNESS: Okay, I have read the article.

12 BY MS. ANDERSON:

13 Q. You have seen a copy of this exhibit and article
14 dated July 5, 1981, from the "Sunday Lexington Herald
15 Leader" before today, have you not?

16 A. I have.

17 Q. Do you recall if you saw this article on or
18 about July 5, 1981?

19 A. I do not recall.

20 Q. Do you remember if you saw it shortly after it
21 was printed?

22 A. I do not recall specifically when I saw it.

23 Q. Does this article from the Lexington Herald
24 Leader damage Brown & Williamson's reputation?

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1 A. I would have to read it much more carefully than
2 I aid for the purposes of understanding generally what is
3 here to make any representation about that.

4 Q. Would you do so, please.

5 MR. CLAYTON: Shane, as he is reading it more
6 carefully, before he answers the question, can I ask you
7 why this is relevant to the case?

8 MS. ANDERSON: As I indicated, Brown & Williamson's
9 reputation is at issue here. I am entitled to make this
10 kind of inquiry, and I am doing so.

11 NR. CLAYTON: Maybe I am missing something, but I
12 don't get the specific connection of -- this article is
13 not at issue here. We are not suing the Herald Leader,
14 and the article is different in substance from the
15 publication which CBS made in this case.

16 Why is this relevant?

17 MS. ANDERSON: As I indicated, Lew, Brown &
18 Williamson's reputation is at issue here, and I am
19 entitled to inquire into this witness' opinion.

20 THE WITNESS: Okay, would you restate your question,
21 please?

22 MS. ANDERSON: Would you repeat the question, please.

23 (Record read as requested.)

24 MR. CLAYTON: Is this question directed to Brown &

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1 Williamson's reputation in general, its reputation at the
2 time, or reputation now, its reputation throughout the
3 United States, or its reputation in this area?

4 MS. ANDERSON: I am addressing Brown & Williamson's
5 reputation with which Mr. Humber is concerned.

6 MR. CLAYTON: My question is -- I am objecting to the
7 form of the question because it's vague in parts because
8 this is an article that was published three years ago.

9 Are you speaking about its reputation at the
10 time, its reputation now, its reputation in the area when
11 it was published -- this is a regional publication -- or
12 are you speaking about its reputation in Chicago? This
13 was published in Kentucky.

14 BY MS. ANDERSON:

15 Q. Can you answer the question, Mr. Humber?

16 A. I would have to answer it that the article
17 presents a number of charges against Brown & Williamson,
18 basically as outlined in an FTC report. There is a great
19 deal more emphasis placed on the charges than on the
20 responses to those charges. The balance of the article is
21 negative.

22 I cannot tell you whether or not it damages the
23 reputation of the company.

24 Q. This article accuses Brown & Williamson of

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1 enticing young people to smoke, does it not?

2 MR. CLAYTON: Objection to the form. You may answer.

3 Well, I am going to object in particular because
4 I think you are asking him to characterize the documents.
5 I mean, it says what it says. Why you are asking him to
6 characterize it, he didn't write it?

7 BY MS. ANDERSON:

8 Q. Can you answer the question, Mr. Humber?

9 MR. MASON: I think the question is answered.

10 THE WITNESS: I did not answer the question.

11 MR. CLAYTON: Did you answer the question, Mr.
12 Humber?

13 THE WITNESS: I do not believe I answered the
14 question.

15 BY MS. ANDERSON:

16 Q. Will you answer the question?

17 A. Will you restate the question, please?

18 Q. Yes.

19 The article, Exhibit 1, accuses Brown &
20 Williamson of enticing young people to smoke, does it not?

21 MR. CLAYTON: I am going to direct the witness not to
22 answer the question. You are asking him to characterize a
23 document which he didn't write. If you want to ask him a
24 specific question about his personal knowledge, you may do

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1 so. You asked him whether he knew whether the article
2 damaged Brown & Williamson's reputation. He has answered
3 that question.

4 If you want to ask him specific factual
5 questions, you may do so, but as he is not the author of
6 the document, wasn't connected with the document, I will
7 object to your asking him to characterize the document.

8 MS. ANDERSON: And you are instructing the witness
9 not to answer, is that correct?

10 MR. CLAYTON: I am instructing him not to answer
11 questions which ask him to characterize and interpret the
12 language of this article which was not authored by him.

13 BY MS. ANDERSON:

14 Q. Has anyone told you at any time, Mr. Bumber,
15 that Brown & Williamson's reputation was damaged by the
16 Lexington Herald Leader article?

17 A. I cannot recall.

18 Q. The Lexington Herald Leader article accuses
19 Brown & Williamson of immoral behavior, does it not?

20 MR. CLAYTON: Objection for the same reason as we
21 have stated.

22 If you want to ask him whether people ever said
23 to him that the article made that accusation, that's a
24 factual statement to which he can testify. If you want to

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1 ask Mr. Cohen what he meant when he wrote the article,
2 please ask Mr. Cohen.

3 MS. ANDERSON: Well, I am asking this witness.

4 MR. CLAYTON: Well, this witness didn't write the
5 article, that's the problem with the question, the problem
6 with each of those questions. The document speaks for
7 itself. The document was produced in discovery by CBS.
8 In fact, there is good evidence your own reporter spoke
9 with the man who wrote this article.

10 BY MS. ANDERSON:

11 Q. Mr. Humber, are you going to answer the
12 question?

13 MR. CLAYTON: I am going to direct the witness not to
14 answer that question. It's asking him to characterize the
15 article. I think it's an improper question. I direct him
16 not to answer.

17 BY MS. ANDERSON:

18 Q. Turn to Page 2 of Exhibit 1, Mr. Humber.

19 Oh, I take it you are going to accept your
20 counsel's advice and refuse to answer the question --

21 A. I am.

22 Q. -- is that right.

23 Now, I direct your attention to the box in the
24 center of the page where it sets out on the left hand of

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1 the box, "To the best of your ability (considering some
2 legal constraints) relate the cigarette to pot, wine,
3 beer, sex, et cetera."

4 There is below that it says, "Advertising
5 strategy," and that's set out alongside of Viceroy.

6 In your opinion, Mr. Humber, did that portion of
7 the article damage Brown & Williamson's reputation?

8 MR. CLAYTON: Shane, this question has been asked and
9 answered. You asked him to read the article thoroughly
10 which he did twice, and then you said, "Mr. Humber, did
11 this article damage Brown & Williamson's reputation?"

12 He answered that question. He gave you -- you
13 asked for the answer back, but I don't see --

14 MS. ANDERSON: Now, I am asking about a specific part
15 of this article.

16 MR. CLAYTON: But his answer was that he, and we can
17 read it back if my recollection or notes are improper, he
18 said he doesn't know whether the article damaged Brown &
19 Williamson's reputation; and now all you are doing is --
20 you can go through the article sentence by sentence, but I
21 don't see why that changes his answer. If he doesn't
22 know, he doesn't know.

23

24

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1 BY MS. ANDERSON:

2 Q. Do you have an opinion, Mr. Humber, as to
3 whether or not this particular portion of the article to
4 which I have just directed your attention damaged Brown &
5 Williamson's reputation?

6 MR. CLAYTON: I will permit him to answer the
7 question does he know. I mean, I think, in fact, that
8 question has been asked and answered, but if you want to
9 ask him --

10 MS. ANDERSON: I am asking for his opinion, Mr.
11 Clayton, which I have a right to do.

12 MR. CLAYTON: First ask him if he has an opinion on
13 that matter, and then you can ask him the question about
14 what his opinion is.

15 Do you have an opinion on that matter, Mr.
16 Humber?

17 MR. GINSBERG: Wait, who is taking this deposition?

18 MS. ANDERSON: Mr. Clayton is asking and objecting;
19 and if he had his "cruthers", he would answer the
20 question.

21 BY MS. ANDERSON:

22 Q. Now, Mr. Humber, --

23 A. Yes.

24 MR. CLAYTON: I apologize, Shane, I am sorry.

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1 THE WITNESS: You are asking me the question, ask it.

2 BY MS. ANDERSON:

3 Q. Yes, in your opinion, does that part of the
4 article to which I have directed your attention damage
5 Brown & Williamson's reputation?

6 MR. CLAYTON: Are you referring here to reputation of
7 Brown & Williamson, Shane? I am sorry to interrupt again,
8 but these are the same -- your questions have the same
9 defects which I have pointed out, I believe, in the past.

10 You are talking about the reputation now, the
11 reputation then?

12 BY MS. ANDERSON:

13 Q. We will start in 1981, July 5th or 6th or 7th,
14 1981.

15 A. I do not believe that I or anyone else can
16 answer a question with regard to a specific part of a long
17 piece in terms of what it did or did not do.

18 Q. So you have no opinion as to whether or not that
19 phrase damages, that particular portion of the article
20 damages Brown & Williamson's reputation, is that correct?

21 MR. CLAYTON: Objection because you are
22 mischaracterizing his testimony.

23 You have asked him do you know whether this
24 damaged the reputation. He said no, and now you asked him

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1 okay, what about this piece, and he said he can't testify
2 as to this piece abstracted from the article as a whole.
3 And now you are trying to characterize his testimony and
4 make it into something else.

5 MS. ANDERSON: I asked --

6 MR. CLAYTON: If you want to ask him a new question,
7 ask a new question.

8 MS. ANDERSON: Not at all, Mr. Clayton. I want my
9 question answered in his opinion, and I asked for his
10 opinion specifically, and this portion of the article to
11 which I direct his attention damage Brown & Williamson's
12 reputation. Again, we are talking about July 1981.

13 MR. CLAYTON: I'd like the last question and answer
14 read back because I believe this question has been
15 answered, but could the reporter please just read the last
16 question and answer back?

17 (Record read as requested.)

18 MR. GINSBERG: Let the record reflect while the
19 question was being read back Mr. Humber and Mr. Clayton
20 were conferring off the record.

21 BY MS. ANDERSON:

22 Q. Can you answer the question, Mr. Humber?

23 MR. CLAYTON: Object because we just had it read
24 back.

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1 MS. ANDERSON: Mr. Clayton --

2 MR. MASON: Just wait a second, just wait a second.

3 I am not going to sit through this.

4 Number one, it was you, Mr. Clayton, who
5 suggested that Ms. Anderson ask whether the witness had an
6 opinion, which she did, and the witness said neither I nor
7 nobody else can tell whether the sentence, whether the
8 article did or did not. Now, that's an answer as to
9 knowledge, not as to opinion which is what you asked.

10 MR. CLAYTON: That's not what he --

11 MR. MASON: Now, Ms. Anderson is asking whether --

12 MR. CLAYTON: That's not what the witness said.

13 That's not what the reporter read back.

14 MR. MASON: I know what the reporter read back.

15 MR. CLAYTON: You are mischaracterizing his
16 testimony. He said he can't answer to a specific portion
17 of a larger piece. Don't make the testimony --

18 MR. MASON: He can't answer whether it did or did
19 not, that is an answer as to knowledge, not as to opinion.

20 THE WITNESS: She asked for my opinion, that is what
21 I was providing.

22 MR. CLAYTON: Look, Mr. Humber, please don't answer
23 into colloquy. This is just colloquy. It's not a
24 question put to you, not evidence.

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1 MR. MASON: If you were answering as to opinion,
2 that's fine, but that is what Ms. Anderson's last question
3 was designed to make perfectly clear when Mr. Clayton
4 interrupted with a whole set of additional objections.

5 MR. CLAYTON: I was pointing out that that question
6 had been asked, and the witness gave an answer to the
7 question which is now being asked a second time.

8 MR. MASON: He gave an answer which was ambiguous,
9 and the question was designed to clarify. The witness
10 stated that what he intended to give was his opinion.

11 MR. CLAYTON: The question doesn't clarify anything.
12 It repeats the question.

13 It's asked again because you are dissatisfied
14 with the answer. It's different to ask if you ask a
15 different question to clarify, that's unobjectionable. If
16 you ask the same question because you don't like the first
17 answer, that's objectionable, and that's the substance of
18 my objection.

19 MR. MASON: We already established, Mr. Clayton, that
20 you don't listen to questions. It's also clear from a
21 previous transcript of this deposition that you don't
22 listen to answers. You also don't listen to colloquy.

23 My question is to you is what are you doing here
24 wasting time?

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1 MR. CLAYTON: I really don't think I have to respond
2 to nasty speeches on the record.

3 MR. MASON: Then don't.

4 MR. CLAYTON: That's the last of my responses to your
5 suggestions, sir. I don't find them helpful or
6 appropriate.

7 BY MS. ANDERSON:

8 Q. Mr. Humber?

9 A. Yes.

10 Q. Let me ask you the question to which I want an
11 answer, please.

12 I am again directing your attention to that
13 portion of the article as before. In your opinion does
14 that part of the article damage Brown & Williamson's
15 reputation?

16 A. In my opinion neither I nor anyone else can come
17 to such conclusions about small parts of a large article.

18 Q. And in your opinion does the article as a whole
19 damage Brown & Williamson's reputation?

20 MR. CLAYTON: Objection, asked and answered, but you
21 may answer again, sir.

22 THE WITNESS: I answered the question before
23 indicating the weight given in the article with regard to
24 charges and responses.

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1 I answered that I could make no determination
2 regarding anything other than that.

3 BY MS. ANDERSON:

4 Q. Mr. Humber, you didn't speak to the Lexington
5 Herald reporter prior to the time this article was
6 published, did you?

7 A. I don't recall.

8 Q. You don't recall either way?

9 A. No.

10 Q. Do you recall speaking to him after the article
11 was published?

12 A. No, I do not recall.

13 Q. Do you know who from Brown & Williamson spoke to
14 this reporter, if anyone, before the article was
15 published?

16 A. This article indicates that Mr. Wyatt spoke with
17 him, and I have no reason to doubt that.

18 Q. Have you read any Brown & Williamson memoranda
19 memorializing a conversation with the reporter who wrote
20 this article?

21 A. I am sorry?

22 Q. Do you recall having read any memoranda that
23 memorialized the conversation anyone at Brown & Williamson
24 had with the Lexington Herald reporter?

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1 A. I cannot recall specifically.

2 Q. Do you have a general recollection of having
3 read such memos?

4 A. Given the practice of our department it is
5 extremely likely.

6 Q. What practice of your department?

7 A. Of keeping certain records regarding certain
8 press queries.

9 Q. Would you describe, please, the practice of your
10 department of keeping certain records of certain press
11 queries a little more specific?

12 A. As a general policy of the department we keep
13 records of conversations with the press on any number of
14 issues.

15 Q. What issues?

16 A. Well, those relating to us. We would not keep
17 records of routine conversations that were extremely
18 minor, or of conversations that went over the same ground
19 that say twenty reporters have asked the same question.
20 We could not keep an elaborate detail of responses
21 provided to every reporter, but in general there is some
22 documents relating to press queries.

23 Q. Is that document usually headed "Press Query"?

24 A. It is usually, yes.

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1 Q. You have a specific form for the memorialization
2 of such inquiries, right?

3 A. We did. We did have a printed form before we
4 went to word processors, and that's incorporated into the
5 machine, I believe.

6 Q. Your department had inquiries from reporters
7 about the FTC reports, did it not?

8 A. It did.

9 Q. Do you recall how many such inquiries that your
10 department had?

11 A. No, I do not.

12 Q. Would those inquiries from reporters concerning
13 the FTC reports have been memorialized in writing?

14 A. Yes, if --

15 Q. Each of them?

16 A. Not necessarily.

17 Q. Do you recall how a determination was made
18 concerning which were and which were not memorialized, and
19 I am now discussing specifically inquiries from reporters
20 about the FTC report?

21 MR. CLAYTON: As opposed to the general practice
22 which he testified to earlier?

23 MS. ANDERSON: Yes.

24 THE WITNESS: Ask me the question again.

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1 MS. ANDERSON: Would you read the question.

2 (Recorder read as requested.)

3 THE WITNESS: I do not recall the specific criteria.

4 MS. ANDERSON: Would you mark this document, please,
5 as Humber Deposition Exhibit No. 2.

6 (Humber Deposition Exhibit

7 No. 2 marked as requested.)

8 BY MS. ANDERSON:

9 Q. I am handing you a document first to your
10 counsel who will then share it with you. It has been
11 marked as Humber Deposition Exhibit No. 2. This is a
12 document marked "Press Query", dated July 2, 1981, at 9:45
13 a.m.

14 Please look at this document. I will have some
15 questions for you.

16 MR. CLAYTON: While he is reading the document, can I
17 make a quick call for one minute?

18 MS. ANDERSON: Yes.

19 MR. CLAYTON: Thank you.

20 (Short interruption was had
21 in the proceedings.)

22 BY MS. ANDERSON:

23 Q. Have you finished your review of the document
24 that has been marked as Humber Deposition Exhibit No. 2?

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1 A. I have. I will refer to it again when you ask
2 me specific questions.

3 Q. Do you recall having received this document, Mr.
4 Humber?

5 A. I do not recall, but my name is on the list, and
6 I obviously believe that I did.

7 Q. And it's likely you did in the ordinary course
8 of business, right?

9 A. Yes, yes, absolutely.

10 Q. Would you have maintained a copy of this
11 document in your files?

12 A. I do not believe so.

13 Well, when you say my files, what do you mean?
14 Do you mean department files or personal files?

15 Q. Your personal file?

16 A. I would not.

17 Q. What is your practice, Mr. Humber, when you
18 receive a copy of a memorandum such as this? Let's stick
19 to your receipt of press query memos.

20 A. Right.

21 Q. After you have read this document, you testified
22 you don't keep it in your personal files. What then is
23 your practice with respect to retention of such memos?

24 A. The reason -- well, practices will differ from

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1 press query to press query, but the basic reason that I
2 would not keep it in a personal file or keep it on my desk
3 or in my desk or in my office would be that copies are
4 retained in the department so that I have access to them.
5 So it's just not to duplicate tremendous quantities of
6 paper.

7 Q. So you would have read this and thrown it away,
8 is that right?

9 A. I could have or could have retained it for
10 several days or several weeks. I just don't remember.

11 Q. The persons to whom this exhibit were addressed
12 and the persons that received copies of the memo, I would
13 just like to inquire briefly as to their titles.

14 Mr. Hughes is the head of the company, right?

15 A. Dr. Hughes is chairman.

16 Q. Dr. Peoples is that?

17 A. Peoples.

18 Q. Peoples, what's his position?

19 A. Senior vice president for law and general
20 counsel.

21 Q. And R. Sachs?

22 A. Vice president for law and deputy general
23 counsel, I believe.

24 Q. Who is R. Pittman?

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1 A. Mr. Pittman has been with the company some
2 twenty years to the best of my knowledge when he -- at
3 this stage he had a title like executive vice president,
4 but I don't recall exactly what that title was at the
5 time.

6 Q. Has he since retired?

7 A. No, he has not.

8 Q. He is still with the company?

9 A. He is with Batus.

10 Q. So he is with the American parent, right?

11 A. Yes.

12 Q. Mr. J.K. Wells?

13 A. He is corporate counsel.

14 Q. G. Reia?

15 A. I don't know what his title was at this date.

16 Q. Was he --

17 A. He was a marketing department employee.

18 Q. Do you recall whether he was the man in charge
19 of the Viceroy group at the time?

20 A. I don't recall specifically.

21 Q. Who is S. Wallace?

22 A. He was senior vice president for marketing.

23 Q. E.T. Parrack?

24 A. I believe at the time he was vice president for

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1 brand management.

2 Q. Yourself, of course, and R. Buzogany?

3 A. Mr. Buzogany was in the department of corporate
4 affairs. I believe his title was manager of internal
5 communications.

6 Q. And he is in corporate affairs at the time right
7 now?

8 A. He is not.

9 Q. Having read Humber Deposition Exhibit 2, do you
10 recall whether you spoke to anyone prior to July 5, 1981,
11 concerning the press query from Gary Cohen of the
12 Lexington Herald Leader?

13 A. I cannot recall such conversations.

14 Q. Do you recall whether you spoke to Mr. Wyatt
15 about this press inquiry either before or after July 2,
16 1981, which is the date of the memo?

17 A. I am sure I spoke with him, but I do not recall
18 when.

19 Q. Do you have a recollection of your conversation
20 with Mr. Wyatt about this particular press query?

21 A. No.

22 Q. This memo indicates that a reporter, Gary Cohen,
23 made an inquiry that was received by Mr. Wyatt on July 2,
24 1981, at 9:45 a.m.

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1 Do you recall whether this inquiry from Mr.
2 Cohen was the first press inquiry Brown & Williamson had
3 had with respect to the FTC report?

4 A. I do not recall.

5 Q. Do you recall any meetings either with Mr.
6 Wyatt, Mr. Wells, Mr. Reia, at which Brown & Williamson's
7 response to press inquiries about the FTC report were
8 discussed?

9 A. I am sure I had numerous conversations with Mr.
10 Wyatt and Mr. Wells from the date of the FTC report, but I
11 cannot recall the specifics of those conversations or
12 specifically when they occurred.

13 To the best of my knowledge I never spoke with
14 Mr. Reid about them.

15 MS. ANDERSON: Read his answer, please.

16 (Record read as requested.)

17 BY MS. ANDERSON:

18 Q. To your knowledge was Brown & Williamson advised
19 of the issuance on the date the FTC report was issued?

20 MR. CLAYTON: Advised of what?

21 MS. ANDERSON: Of its issuance.

22 THE WITNESS: By the FTC?

23 BY MS. ANDERSON:

24 Q. Or by anyone.

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1 A. I don't recall on that date, no.

2 Q. Do you have any recollection of the first time
3 you learned that the FTC had issued a report that now has
4 become or the contents of which have become the subject of
5 press inquiries in this lawsuit?

6 A. I believe I received -- the first knowledge I
7 had of it I believe came from a friend of mine in
8 Washington.

9 Q. And who was that friend?

10 A. His name is Gary Auxier.

11 Q. With whom is he associated?

12 A. He is press secretary to Senator Hudeleston.

13 Q. Do you recall when Gary --

14 A. Auxier.

15 Q. -- advised you of this?

16 A. No, I don't recall specifically.

17 Q. Did he send you a copy of the report?

18 A. I can't recall whether he did or not.

19 Q. And you have no recollection of whether your
20 conversation with him occurred before or after July 2,
21 1981, is that right?

22 A. Can you tell me the date of the FTC report?

23 MR. GINSBERG: May '81.

24 THE WITNESS: It would have occurred or it did occur

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1 before July 2nd or that, I am fairly certain, somewhere
2 within the parameter of May 1, if you say that's when it
3 was published.

4 MR. GINSBERG: No, not May 1. May of 1981. I am not
5 sure which date in May.

6 MR. CLAYTON: It's dated May of 1981. Do you know
7 when it was published then? I just don't know. I think
8 he is trying to fix a date around publication.

9 MR. GINSBERG: No.

10 THE WITNESS: I don't recall the circumstances of
11 issuance. I don't recall whether they had a press
12 conference. I just don't recall those circumstances at
13 the time.

14 BY MS. ANDERSON:

15 Q. And you don't recall the specifics of any
16 meetings among yourself, Mr. Wyatt, Mr. Wells, and others
17 at Brown & Williamson discussing the FTC report prior to
18 July 2, 1981, is that right?

19 MR. CLAYTON: Objection, asked and answered, I
20 believe. I think he said already that he, according to my
21 notes, he doesn't recall the specifics of those
22 conversations or precisely when they occurred.

23 MS. ANDERSON: If indeed the FTC -- I think you are
24 right, Lew.

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1 MR. CLAYTON: Yes.

2 BY MS. ANDERSON:

3 Q. If indeed the FTC report was issued sometime in
4 May of '81 and the inquiry from the Lexington Herald
5 Leader occurred in July of '81, do those dates help you
6 fix at all when the meetings among yourself, Mr. Wyatt,
7 and others of Brown & Williamson discussing the FTC report
8 occurred?

9 A. Well, clearly after May of 1981, but beyond
10 that, I can't fix them specifically, no. And as I said
11 there would have been many or there were many.

12 Q. You indicated you don't recall specifically the
13 conversations at those meetings. In general, did you
14 discuss how to respond to any press inquiries that might
15 arise as a result of the FTC report's issuance?

16 A. Yes.

17 Q. And do you recall in general any conclusions
18 that were reached in terms of how to respond to press
19 inquiries?

20 A. In what period of time?

21 Q. Again, between May and July of 1981.

22 A. Well, fixing it in that time period, I'd have to
23 say that I don't recall for the reason that we were in a
24 position of developing our knowledge of the specific

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1 parts, and that's what I cannot fix timetables to.

2 Q. What do you mean in a position of developing
3 your knowledge?

4 A. Well, we received an FTC report that had
5 numerous sections in it regarding Brown & Williamson,
6 numerous excerpts from subpoenaed documents. We didn't
7 have those documents in totality in our personal
8 possession when the FTC report was issued, so that there
9 was for those of us who dealt with the matter research
10 functions that took place over time.

11 Q. Do you recall the period of time over which this
12 research took place?

13 A. No, it was a matter of fact. One could not put
14 a conclusion on it since we have received press queries
15 regarding this issuance; the report was issued.

16 Q. You mean from 1981 to today?

17 A. Well, not through today. I can't say that, you
18 know. I haven't had a call today, but the queries
19 regarding the FTC report have been extended over time
20 since its publication.

21 Q. Was part of the research you performed an
22 attempt to locate the documents that were the Brown &
23 Williamson documents in Brown & Williamson's own files
24 that were discussed in the FTC report?

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1 A. I did not perform that function myself, but it
2 was performed, yes.

3 Q. Do you know by whom?

4 A. I do not know specifically; however, Kendrick
5 Wells was sort of designated as the chief researcher to
6 accumulate those papers that were necessary, yes.

7 Q. Do you recall when that took place or when Mr.
8 Wells was so designated?

9 A. I do not.

10 Q. When you first received the FTC report, did you
11 receive the entire document?

12 MR. CLAYTON: You mean him personally, because I am
13 not sure if we have established his personal receipt, or
14 do you mean Brown & Williamson?

15 MS. ANDERSON: Well, let's talk about Mr. Humber
16 personally right now.

17 THE WITNESS: I do not recall what I received first
18 or when I received parts of it.

19 BY MS. ANDERSON:

20 Q. Have you ever seen the FTC report?

21 A. Yes, I have.

22 Q. Do you remember when the first time you saw that
23 report was?

24 MR. CLAYTON: Do you mean the confidential version,

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1 the unconfidential version?

2 MS. ANDERSON: The whole thing.

3 MR. CLAYTON: You mean when the confidential pages
4 and the --

5 MR. ANDERSON: Yes, yes.

6 THE WITNESS: Other than fixing it within several
7 weeks of its release or whatever by the FTC in whatever
8 form they do that, I can't fix it any closer than that.

9 BY MS. ANDERSON:

10 Q. And to the extent you can fix it within several
11 weeks of its issuance, do you recall whether or not you
12 saw the entire FTC report including those versions that
13 had been designated as confidential?

14 A. I do not.

15 Q. Do you recall that there indeed were portions of
16 the FTC report that had been designated as confidential
17 and not initially released to the public?

18 A. I recall that.

19 MR. CLAYTON: You have answered the question. You
20 can just answer the question put to you.

21 BY MS. ANDERSON:

22 Q. You were going to elaborate on the question, Mr.
23 Humber. I will be happy to listen to your elaboration.

24 A. My recall is partially stipulated by the

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1 document you showed me earlier.

2 Q. The Lexington Herald article?

3 A. Yes.

4 Q. And what do you mean? I don't quite follow how
5 you are --

6 A. My recall of this document and my recall of the
7 confidential portions and the other portions has been
8 stipulated by those readings.

9 Q. And I know it's been a few years ago and it's
10 hard to remember what happened yesterday let alone three
11 years ago --

12 A. Right.

13 Q. -- but as refreshed by Exhibit 1 and now Exhibit
14 2, do you recall having received a published copy or the
15 FTC report without the confidential portions in it and
16 later receiving an entire copy of the report with
17 confidential portions included?

18 A. I recall receiving a number of copies in a
19 number of different forms, and that's about the best I can
20 do with my memory.

21 Q. And you can't fix a date as to when?

22 A. I cannot.

23 Q. What?

24 A. I cannot.

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1 Q. Or which, right?

2 A. I cannot.

3 Q. By the way, on Page 2 of Humber Deposition
4 Exhibit 2, the press query from Lexington Herald reporter,
5 I guess it's the second entire paragraph, says, "The
6 reporter's questions centered around the same subjects
7 contained in Jack Anderson's article (attached)."

8 Now, there were no Jack Anderson articles
9 attached to this document as produced by you.

10 Do you recall what articles those were, Mr.
11 Humber?

12 A. I believe there were several columns that Jack
13 Anderson wrote based on information that he received
14 regarding the FTC report. I cannot recall whether they
15 were two or three.

16 Q. Do you recall?

17 A. There were Jack Anderson articles, that's the
18 best I can remember.

19 MS. ANDERSON: Mark these as Humber Deposition
20 Exhibit 2A.

21 (Exhibit No. 2A marked as
22 requested.)

23 BY MS. ANDERSON

Q. Let me hand you a document two pages that I have

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1 marked as Humber Deposition Exhibit 2A. These are two
2 articles written by Jack Anderson. These were not
3 produced from Brown & Williamson's files; however, I
4 believe they are dated in June of 1981 as best as I can
5 read the reproduction of the date on each of these
6 articles and ask that you look at these and tell me to the
7 best of your recollection were these two articles the ones
8 attached to the Wilson Wyatt memo, Humber Deposition
9 Exhibit No. 2?

10 A. Best of my recall they are. I recall them
11 because of the proximity of the cartoons quite frankly.

12 Q. And do you recall having seen these articles
13 before then?

14 A. Before when?

15 Q. Before today?

16 A. Yes.

17 Q. Do you recall whether Jack Anderson had talked
18 with anyone at Brown & Williamson before he wrote the
19 articles that have been marked as Humber Deposition
20 Exhibit 2A?

21 A. To the best of my recall, he did not.

22 MR. CLAYTON: Shane, before you ask questions about
23 this article, I want to take a break for just two minutes,
24 if that's okay?

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1 MS. ANDERSON: Yes.

2 (Short interruption was had
3 in the proceedings.)

4 MS. ANDERSON: Would you read the last question and
5 answer, please.

6 (Record read as requested.)

7 MS. ANDERSON: Would you mark this document, please,
8 as Humber Deposition Exhibit 3, and this one as Humber
9 Deposition Exhibit 4.

10 (Exhibit Nos. 3 and 4 marked as
11 requested.)

12 BY MS. ANDERSON:

13 Q. Mr. Humber, I am handing your counsel two
14 exhibits. One has been marked Deposition Exhibit 3, one
15 Deposition Exhibit 4. I would ask that you look at these,
16 please, and when you are finished, I will have some
17 questions for you.

18 A. I have read them.

19 Q. Turn first to Humber Deposition Exhibit No. 3, a
20 document that's headed "Press Query", dated July 2, 1981
21 at 1:30 p.m.

22 You are indicated, Mr. Humber, as having
23 received a copy of this document. Do you recall having
24 received the document on or about the date it bears?

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1 A. Not specifically, but again I would stipulate
2 that I did.

3 Q. And after having read it, do you recall what you
4 did with it?

5 A. I do not.

6 Q. As you testified about Exhibit 2, is it unlikely
7 that you would have retained a copy of Deposition Exhibit
8 3 in your own personal files?

9 A. Yes, it is.

10 Q. Just so you don't build up too much paper,
11 right?

12 A. Right.

13 Q. The attachment to Deposition Exhibit 3 is an
14 article by Jack Anderson. Do you recall having read this
15 third article by Jack Anderson at about the time it came
16 out?

17 MR. CLAYTON: At about the time the article came out?

18 MS. ANDERSON: Yes.

19 THE WITNESS: Yes, I recall.

20 BY MS. ANDERSON:

21 Q. Now, this second page of Humber Deposition
22 Exhibit 3 has handwriting at the top, indicates to Wilson
23 Wyatt from Tom Howard, TI with the phone number. Then
24 there is up on the left-hand side is written Washington

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1 Post 7-1-81, and it indicates over on the right one page.

2 Is Tom Howard at the Tobacco Institute?

3 A. Not currently.

4 Q. Was he in 1981?

5 A. I believe so.

6 Q. To your knowledge does TI stand for Tobacco
7 Institute?

8 A. Yes.

9 Q. Do you know whether this document, Page 2 of
10 Deposition Exhibit 3, was telecopied to Mr. Wyatt by
11 someone at the Tobacco Institute?

12 MR. CLAYTON: You mean from his own personal
13 knowledge as opposed to just the fact that they are
14 handwritten scrolls saying TI at the top?

15 MS. ANDERSON: Yes, of his own knowledge. I am
16 certainly inquiring as to his knowledge, Mr. Clayton.

17 THE WITNESS: No, I don't.

18 BY MS. ANDERSON:

19 Q. Do you have a telecopier at Brown & Williamson?

20 A. Yes.

21 Q. Did you in 1981?

22 A. Yes.

23 Q. Have you received in the past years that you
24 have been at Brown & Williamson telecopies of documents,

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1 press clips for example, from the Tobacco Institute?

2 A. I don't recall.

3 Q. Do you recall ever having telephoned and asked
4 for any documents to be telecopied to you by the Tobacco
5 Institute?

6 A. I don't recall calling and asking specifically
7 to be telecopied, no.

8 Q. Does Deposition Exhibit 3 refresh your
9 recollection in any way as to any conversations you had
10 with Mr. Wyatt about the FTC report?

11 A. No.

12 Q. I'd like to ask you now to look at Humber
13 Deposition Exhibit No. 4. This document is dated July 3,
14 1981, at 11:00 a.m.

15 Again, you were indicated as having received a
16 copy of this document. Do you recall, Mr. Humber, whether
17 you did receive a copy of this document in the ordinary
18 course of business?

19 A. I don't recall, but I will stipulate that I did.

20 MR. CLAYTON: You can leave the stipulations to me.

21 THE WITNESS: Okay, I'm sorry.

22

23 BY MS. ANDERSON:

24 Q. Humber Deposition Exhibit 4 sets out Brown &

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1 Williamson's response to the Lexington Herald reporter's
2 inquiries, does it not?

3 MR. CLAYTON: Objection to the form, and you are
4 asking him again just to characterize the document. The
5 document speaks for itself. I am not going to have him
6 answer questions characterizing the exhibit.

7 If you want to ask him about his personal
8 knowledge about Exhibit 4, you can go ahead.

9 MR. ANDERSON: Are you instructing him not to answer?

10 MR. CLAYTON: Read the question back, and I will
11 indicate whether I am instructing him not to answer.

12 (Record read as requested.)

13 MR. CLAYTON: If you will limit the question to his
14 personal knowledge, then I will allow him to answer it.

15 MS. ANDERSON: Well, I am asking for his informed
16 knowledge if that is his opinion, if that is his absolute
17 knowledge of the fact, whichever that includes. I am
18 asking for him to answer the question.

19 MR. CLAYTON: When you say inform, my problem is that
20 when you say informed knowledge, what you seem to be
21 saying to me is that you want him to look at this document
22 and interpret it.

23 If you want to know whether he knows whether
24 this document represents the response or whether this

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1 response was given, I have no objection to that question.

2 MS. ANDERSON: Well, then, let's phrase the question
3 the way your counsel would have it phrased.

4 BY MS. ANDERSON:

5 Q. Do you know whether or not Deposition Exhibit 4
6 sets out Brown & Williamson's response to the Lexington
7 Herald reporter's inquiries?

8 A. I do not know that. What I know on the face of
9 it is that it's a response, it is one response in what
10 were clearly a number of conversations Mr. Wyatt had with
11 the reporter. So it's one conversation. I know nothing
12 beyond that.

13 Q. Well, I would ask you to look again at
14 Deposition Exhibit 2 and Deposition Exhibit 3, and to your
15 knowledge does either of those deposition exhibits set out
16 Brown & Williamson's response to any inquiry or inquiries
17 by the Lexington Herald reporter?

18 A. They appear to have set out some responses, yes.
19 Apparently Cohen asked questions, and Wyatt answered some
20 questions or Reid answered some questions. This one --

21 MR. CLAYTON: You can just answer the question that's
22 put to you.

23 THE WITNESS: Document 3 does not include any
24 response.

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1 BY MS. ANDERSON:

2 Q. Exhibit 3 does not, is that right?

3 A. Exhibit 3 does not. Exhibit 2 indicates some
4 responses. Exhibit 4 indicates some responses.

5 Q. Mr. Humber, in your opinion, do the Jack
6 Anderson articles marked as Humber Deposition Exhibit 2A
7 and the one that appears as part of Humber Deposition
8 Exhibit 3 damage Brown & Williamson's reputation?

9 A. Well, very much like the previous article you
10 showed me that Anderson articles set forth negative
11 information about the company. In a cursory reading of
12 them I cannot find any company responses at all, so that
13 the balance, the balance of the pieces is negative.

14 However, I can't give an informed opinion as to whether or
15 not it damaged the company.

16 Q. Does Brown & Williamson as a company have a
17 policy that all press inquiries be handled by the
18 corporate affairs department?

19 A. Yes, we do.

20 Q. Is that a written policy?

21 A. I don't know how it's worded. It has been a
22 written policy, yes.

23 Q. Do you recall as written what that policy says?

24 A. I do not recall as written what that policy

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1 says.

2 Q. What is your general recollection of that
3 policy?

4 A. Well, that that policy does designate the
5 corporate affairs department to handle queries from the
6 press, and is the only department so designated.

7 Q. Does the corporate affairs department have a
8 corresponding policy that if a press inquiry comes in, the
9 corporate affairs department is to get in touch with the
10 legal department prior to responding to a press inquiry?

11 A. Yes.

12 Q. Is that also in writing or is that -- strike
13 that.

14 Is that in writing? You indicated that you
15 weren't sure the prior policy was today in writing.

16 A. I believe it is, but I am not sure.

17 Q. Does that policy require communicating with the
18 legal department prior to responding to any press inquiry?

19 A. I can't recall whether it specified any or not.

20 Q. You have had press inquiries and handled press
21 inquiries, have you not, Mr. Humber, as to which you in
22 your judgment you didn't have to communicate with legal
23 before you responded?

24 A. That is correct.

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1 Q. And what kinds of inquiries are those?

2 A. Those would be queries that have already been
3 answered time and again for general information that is a
4 matter of public record, for queries that -- well, again,
5 it would come that would ask the same questions that had
6 been asked in the past and the same answers would still
7 apply.

8 Q. Well, would that be true of inquiries about the
9 FTC report? For example, the first inquiry or inquiries
10 that came in corporate affairs would communicate with the
11 legal department prior to responding to the press inquiry,
12 correct?

13 A. I don't know.

14 Q. All right, we'll get to some more exhibits that
15 may help you with that.

16 Do you recall yourself handling any inquiries in
17 the past year, year and a half, concerning the FTC report
18 as to which you did not first communicate with the legal
19 department before responding to the reporter?

20 A. I cannot recall.

21 Q. Either way?

22 A. Either way.

23 Q. Are most press inquiries telephone inquiries?

24 A. Yes.

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1 Q. Are all of them telephone inquiries?

2 A. No.

3 Q. Some are face to face, right?

4 A. Yes.

5 Q. Do you recall any face-to-face press inquiries
6 about the FTC report?

7 A. No.

8 Q. Do you ever set up press conferences for Brown &
9 Williamson personnel?

10 A. We have, rarely.

11 Q. Do you recall whether Brown & Williamson had
12 held any press conference or conferences subsequent to the
13 time the FTC report was issued?

14 A. I do not believe we did.

15 Q. Do you recall the first press inquiry concerning
16 the FTC report that you yourself handled?

17 A. No.

18 Q. Do you remember speaking to a man named Michael
19 Radutzky, do you not?

20 A. Yes.

21 Q. He was with WBBM TV, right?

22 A. Yes.

23 Q. Do you recall whether that was the first inquiry
24 that you had handled about the FTC report?

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1 A. I do not.

2 Q. If that had not been the first press inquiry
3 about the FTC report that you had handled, is it likely
4 that you would have written a press query memorandum
5 regarding your handling of the prior press query?

6 If that question is awkward, I will try to
7 rephrase it. I was getting my own self confused as I
8 stated that.

9 Is it likely given your ordinary business
10 practice that you, Thomas Humber, would have written a
11 press query memo with respect to the first press inquiry
12 you directly handled that addressed the FTC report?

13 A. It would depend on the substance of the
14 question.

15 Q. So not necessarily?

16 A. Not necessarily, right. If it was not a
17 substantive question, probably not.

18 Q. Do you remember how many times you talked to Mr.
19 Radutzky?

20 A. Not specifically.

21 Q. Do you remember whether you talked to him more
22 than once?

23 A. Yes.

24 Q. Do you remember the date on which you first

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1 spoke to him?

2 A. No.

3 Q. And you don't remember whether you had talked to
4 any other reporters about the FTC report before you talked
5 to Mr. Radutzky, right?

6 MR. CLAYTON: Objection, asked and answered.

7 You may answer again.

8 THE WITNESS: I do not.

9 BY MS. ANDERSON:

10 Q. Do you remember how your first communication
11 with Mr. Radutzky was made? In other words was that
12 through a telephone call; was that through a face-to-face
13 meeting; was that through a letter; how did the first
14 communication occur?

15 A. It was through a telephone call.

16 Q. By whom to whom?

17 A. Mr. Radutzky to the department. I do not know
18 who he asked for. He got me.

19 Q. Do you remember what he said to you?

20 A. Yes.

21 Q. And what did he say?

22 A. He said that he was working on a series dealing
23 with matters covered in the FTC report. He specified
24 certain issues as dealing with certain companies, and he

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1 asked if we could provide responses to his questions.

2 Q. And did you provide responses to his questions?

3 A. We did; I did.

4 Q. During that first phone conversation?

5 A. I do not believe I did.

6 Q. Do you recall how this happened? Did he call
7 you and then ask you questions and you called him back, is
8 that the way it worked?

9 A. We had as I said more than one conversation. I
10 cannot recall the exact number. To the best of my memory,
11 there were approximately four or five of which two dealt
12 with substantive matters, and the others dealt with what I
13 would call logistics.

14 Q. Would you explain that a little further to me;
15 what do you mean by substantive matters?

16 A. In which I provided -- we had long conversations
17 in which I provided substantive responses.

18 Q. And what do you mean some regarded logistics?

19 A. Well, there was a request for certain
20 information that we send him or several requests, and
21 those were a matter of did he get it, did he send it, that
22 kind of logistics. There also could have been brief
23 conversations regarding, you know, are you ready now; no,
24 I am not, logistical conversations establishing a period

l in which we could converse.

2 Q. With respect to these conversations establishing
3 a period for conversing --

4 A. Right.

5 Q. -- did you make a memo of those particular
6 conversations?

7 A. I don't believe I did, no.

8 Q. Do you recall having written memoranda outlining
9 your conversations with Mr. Radutzky?

10 A. I don't recall. I clearly would have written
11 down his name and number and affiliation on a piece of
12 paper so I could get back to him, but beyond that I can't
13 recall anything that I wrote about those early
14 conversations.

Q. Let me hand you a document that may help you.

16 First we have to mark it.

17 MS. ANDERSON: Would you mark this, please, as Humber
18 Deposition Exhibit No. 5.

19 (Exhibit No. 5 marked as
20 requested.)

21 BY MS. ANDERSON:

22 Q. I am handing your counsel a copy of the document
23 that has been marked as Humber Deposition Exhibit No. 5
24 and ask, Mr. Humber, whether or not you prepared this

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1 document which is headed "Press Query", dated November 4,
2 1981, at 3:30 p.m.?

3 A. Your question is did I write this?

4 Q. Yes.

5 A. Yes.

6 Q. If you need a little time to review this
7 document, please take it. I am going to have some further
8 questions.

9 A. Okay.

10 MR. CLAYTON: Why don't you read it thoroughly.

11 THE WITNESS: I have read it.

12 BY MS. ANDERSON:

13 Q. Does Humber Deposition Exhibit 5 refresh your
14 recollection as to the date of the first conversation you
15 had with Michael Radutzky?

16 A. No, other than it would have been at the most
17 several days prior to the date this memo is written.

18 Q. On what do you base that response?

19 A. From my recollection that he had advised me that
20 we were dealing in a short period of time; and, therefore,
21 responses would have to be within a short period of time.

22 To the best of my recollection all my
23 conversations with Mr. Radutzky took place within a week
24 time span.

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1 Q. So is it then your testimony that the first
2 telephone conversation you did not memorialize in writing?

3 A. That is correct.

4 Q. The telephone conversation you had with Mr.
5 Radutzky on -- strike that.

6 Did you have a telephone conversation with Mr.
7 Radutzky on November 4, 1981, at 3:30 p.m.?

8 A. Yes.

9 Q. Do you recall whether that was the second
10 telephone conversation you had with him?

11 A. I do not.

12 Q. It was not the first in any event?

13 A. It was definitely not the first.

14 Q. Now, did you call him on November 4, 1981, at
15 3:30?

16 A. I do not recall.

17 Q. Who placed the call?

18 A. I cannot recall.

19 Q. When you talked to him, were you in your office?

20 A. I believe so.

21 Q. Was anyone else in your office with you?

22 A. No.

23 Q. Mr. Wells was not in the same room?

24 A. No, he was not.

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1 Q. Did you tape record the conversation?

2 A. I did not.

3 Q. Did you take notes?

4 A. I did.

5 Q. Did you keep those notes?

6 A. I did not.

7 Q. Did you prepare this memorandum that has been
8 marked as Humber Deposition Exhibit No. 5 from those
9 notes?

10 A. I did, and notes that I had made prior to the
11 phone call.

12 Q. What notes had you made prior to the phone call?

13 A. Personal notes to provide me with keys to the
14 responses.

15 Q. And how had you obtained those keys to the
16 responses?

17 A. Well, I had conversations with Mr. Wells, and I
18 looked at certain things myself.

19 Q. What things?

20 A. Documents.

21 Q. Do you recall what documents?

22 A. I'm sure that I read through the FTC report.
23 Beyond that I can't recall specifics of what documents I
24 looked at.

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1 Q. Do you know what part of the FTC report you
2 looked through?

3 A. My recall is that because of the short period of
4 time involved that I only looked at those sections that he
5 had specifically referred to, so it would be a fairly
6 short section. Those related to certain aspects of the
7 charges against Brown & Williamson.

8 Q. Were those sections to which Mr. Radutzky
9 referred confidential sections of the FTC report?

10 A. I do not know.

11 Q. In any event, you had those sections in your
12 possession prior to talking to him, right?

13 A. I don't recall what. As I say there were so
14 many versions, if you will, of this that I don't recall
15 what I had when.

16 Q. Do you remember having read those portions of
17 the report about which he was inquiring prior to his
18 inquiry?

19 A. Yes, I had.

20 Q. But your recollection doesn't fix a time?

21 A. No.

22 Q. When did you draft this memorandum?

23 A. This one?

24 Q. Yes, Humber Deposition Exhibit 5.

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1 A. Right after the completion of the call.

2 Q. So it was drafted on the 4th of November, 1981,
3 right?

4 A. That is correct.

5 Q. And you prepared this document in the ordinary
6 course of business, right?

7 A. Yes.

8 Q. And it has been retained in the files of Brown &
9 Williamson, correct?

10 A. Yes.

11 Q. Paragraph 2 of Humber Deposition Exhibit 5
12 states, "With Mr. Wells' help," and I am reading only the
13 last sentence of that paragraph, "the following responses
14 were provided:"

15 A. I am sorry?

16 Q. The second full paragraph.

17 MR. CLAYTON: There is one that's number two. I
18 think that's the confusion.

19 BY MS. ANDERSON:

20 Q. No, may I indicate?

21 A. Yes.

22 Q. I think this is the first full paragraph; this
23 is the second full paragraph.

24 A. Okay, yes.

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1 Q. "With Mr. Wells' help the following responses
2 were provided:"

3 Why did you need Mr. Wells' help to provide
4 responses?

5 A. Because Mr. Wells had as I said been the
6 principal researcher of all the facts as we knew them
7 regarding the FTC report.

8 Q. What did Mr. Wells say to you when you asked for
9 his help?

10 A. I can't recall specifically what he said or what
11 I said.

12 Q. Did he write down the response that you should
13 give Mr. Radutzky?

14 A. He did not.

15 Q. Did you write down the response that Mr. Wells
16 told you you should give Mr. Radutzky?

17 MR. CLAYTON: Objection to the form. I don't think
18 he has testified that Wells told him about a response that
19 he should give Radutzky.

20 MS. ANDERSON: That's the point.

21 BY MS. ANDERSON:

22 Q. Did Mr. Wells tell you what response to give Mr.
23 Radutzky?

24 A. No. We discussed the queries, and we discussed

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1 what each of us knew of our own knowledge and what we had
2 accumulated throughout the time that we had been dealing
3 with this.

4 Q. And at that point in time what did you know of
5 your own knowleage?

6 A. Well, what I knew in terms of my memory and what
7 I had in terms of haro documents are two different things.

8 Q. You mean you can't recall as you sit here today
9 what you knew then, is that right?

10 A. What I -- yes, what I had in recall and what I
11 had access to in terms of documentation.

12 Q. Were you seeking legal advice from Mr. Wells?

13 A. I was seeking both legal -- yes.

14 Q. Do you frequently need legal advice prior to
15 responding to a press inquiry?

16 A. Yes.

17 Q. When you communicated with Mr. Radutzky in the
18 phone conversation that occurred at 3:30 p.m. on November
19 4th, did you read responses to Mr. Radutzky or dia you
20 ad-lib?

21 A. I dia both.

22 Q. Do you remember what you read and what you
23 ad-libbed?

24 A. I do not.

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1 Q. Now, paragraph numbered 1 on Humber Deposition
2 Exhibit 5 states, and I am reading now the third sentence,
3 "Cigarette ads are intended to attract smokers from other
4 brands, not to attract new smokers."

5 Is that statement true for all Brown &
6 Williamson cigarette ads?

7 A. I believe it is.

8 Q. In Brown & Williamson parlance is a new smoker
9 the same thing as a starter?

10 MR. CLAYTON: I am going to object for a moment here.
11 I'd like to take a look at the Court's order if we may
12 because I think we are getting close to a section --

13 MS. ANDERSON: Let's wait till I get to the section
14 if you will. I will give you the order, but I'd like a
15 response.

16 MR. CLAYTON: What I am saying is I think you are
17 there right now.

18 MR. GINSBERG: To ask him what the term means?

19 MR. CLAYTON: Yes, that's correct.

20 Court's order precludes discovery of subject of
21 whether Brown & Williamson's advertisements are designed
22 to attract new smokers, and I think we have to abide by
23 the Court's order.

24 I have no objection to your fully exploring what

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1 he said to Mr. Radutzky on the phone, and I have no
2 objection to your going through this memo, but I'm going
3 to object to anything that touches, that gets into that
4 area; and I am concerned that you are asking for the
5 definition of a new smoker because you are getting into
6 that area.

7 MS. ANDERSON: I asked, I think, whether or not in
8 Brown & Williamson's parlance a new smoker is referred to
9 as a starter.

10 MR. CLAYTON: Okay, if you want to ask him that
11 question.

12 MS. ANDERSON: I just did.

13 MR. CLAYTON: I will allow him to answer that
14 question. I am just flagging the fact that I think
15 because you have put several questions already this
16 morning which verbatim go over subject matter that the
17 Court has ruled out, and I don't want you to slip in a
18 question now which is again going to repeat that verbatim.

19 MS. ANDERSON: I would suggest that you wait until I
20 slip in the question, Lew, until you object to it and not
21 anticipate where I am going.

22 Surely that's something you tell your own
23 witness. I would ask that you do it with me, too.

24 MR. CLAYTON: Okay.

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1 BY MS. ANDERSON:

2 Q. Now, Mr. Humber, can you remember my question?

3 MR. CLAYTON: Why don't we read the question.

4 (Record read as requested.)

5 MR. CLAYTON: If you know.

6 THE WITNESS: I can't answer the question.

7 BY MS. ANDERSON:

8 Q. Because you don't know?

9 A. Because of the word parlance. I can't attest to
10 what's parlance at Brown & Williamson.

11 Q. Have you ever as an acting corporate affairs
12 department head used the phrase "starter" to refer to a
13 new smoker?

14 A. Yes.

15 Q. And have you heard others at Brown & Williamson
16 use starter to refer to new smokers?

17 A. Yes.

18 Q. Brown & Williamson markets many brands of
19 cigarettes, right?

20 A. Yes.

21 Q. Not just --

22 A. Not what we call many.

23 Q. Not just Viceroy?

24 A. That is correct.

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1 Q. And when you said to Mr. Radutzky cigarette ads
2 are intended to attract smokers from other brands, not to
3 attract new smokers, you were referring not only to
4 Viceroy ads, right?

5 A. That is correct.

6 Q. The next statement in the paragraph that's
7 numbered 1, states, "Research shows that this is, inaeea,
8 what that advertising achieves."

9 What research, Mr. Humber?

10 A. There are --

11 MR. CLAYTON: You mean what research was he referring
12 to in this conversation with Mr. Radutzky, is that your
13 question, or are you speaking of research in general
14 because I think there is a difference?

15 MS. ANDERSON: It's his statement, Mr. Clayton. I am
16 asking about Humber Deposition Exhibit 5. I read a
17 sentence he wrote, and I am asking what research he was
18 talking about.

19 MR. CLAYTON: Okay, fine. You have clarified the
20 question you are asking, what research he was talking
21 about.

22 Excuse me, sir.

23 MR. GINSBERG: He wasn't talking to you, Mr. Clayton.
24 He was talking to me.

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1 MR. CLAYTON: I could hear loud murmurs.

2 MR. GINSBERG: You have good ears.

3 BY MS. ANDERSON:

4 Q. Mr. Humber?

5 A. There are several research documents to which I
6 have been exposed which indicate this.

7 Q. Would you describe for the record, please, what
8 documents, what such documents are?

9 A. I can't -- I can't recall specifics. I have
10 seen more than one. I have read several, and I have been
11 exposed to verbal presentations regarding such research.

12 Q. What verbal presentations?

13 A. I have heard verbal presentations by a man from
14 England, but I do not recall his name or who he really is
15 specifically, but that is an instance where I recall
16 hearing from a researcher what his research had shown.

17 Q. Do you remember when?

18 A. No, I don't.

19 Q. Do you remember where you were?

20 A. Yes, I know where I was.

21 Q. Where was that?

22 A. I was in Brussels.

23 Q. At a conference of some kind?

24 A. Yes.

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1 Q. What kind of conference?

2 A. It was an infotab workshop.

3 Q. What is an infotab workshop?

4 A. It's a conference of -- it's members and
5 associate members which are basically international
6 tobacco companies and manufacturing associations.

7 Q. When was this conference?

8 A. I can't recall.

9 Q. Have you been to Brussels more than once?

10 A. Yes.

11 Q. How many times?

12 A. I don't know.

13 Q. Do you have any openings in your department?

14 A. If you want to take on the job of international
15 travel if you think it's fun, go right ahead.

16 Q. What documents have you read that contain
17 research showing cigarette ads attract smokers from other
18 brands that don't attract new smokers?

19 A. Again, I have read more than one specific title
20 or authors of those documents. I cannot recall.

21 Q. Do you remember who published them?

22 A. No. No, I do not.

23 Q. Was the man you heard in Brussels named
24 Watterson?

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1 A. That name rings a bell, but I can't recall if it
2 was.

3 Q. Do you have copies of any of the documents you
4 have read that indicate smokers -- strike that -- that
5 advertising attracts smokers from other brands rather than
6 attracts new smokers?

7 A. I don't recall if I do.

8 Q. Were you asked to look through your files for
9 documents to produce to CBS in this lawsuit?

10 A. I was.

11 Q. Were you asked to look for documents showing
12 that cigarette ads attract smokers from other brands
13 rather than attract new smokers?

14 A. I don't believe I was.

15 Q. And you don't recall if you have those documents
16 in your files?

17 MR. CLAYTON: Objection, asked and answered. He
18 testified that he doesn't recall having copies of those
19 documents. Please don't go over the same ground again and
20 again.

21 BY MS. ANDERSON:

22 Q. The paragraph on Humber Deposition Exhibit 5
23 that is No. 2 --

24 A. Yes.

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1 Q. -- indicates they came up with some radical
2 plans.

3 Is that your phrase, Mr. Humber, "radical
4 plans"?

5 A. I don't recall.

6 Q. Did you read any documents from Bates before you
7 talked to Mr. Racutzky?

8 MR. CLAYTON: What do you mean by documents from
9 Bates? You mean authored by Bates, sent by Bates? Just
10 because there is a difference.

11 MS. ANDERSON: Both.

12 MR. CLAYTON: Either one, okay.

13 THE WITNESS: I recall specifically reading excerpts
14 that were in the FTC report. I do not recall whether it
15 went beyond that to full documents or not.

16 BY MS. ANDERSON:

17 Q. Do you recall whether Mr. Wells told you that
18 Bates had come up with some radical plans?

19 MR. CLAYTON: You mean whether Wells specifically
20 used that language?

21 MS. ANDERSON: Yes.

22 THE WITNESS: I don't recall whose word radical was
23 if that's your question.

24 BY MS. ANDERSON:

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1 Q. You also state, "The documents prepared by Bates
2 were their opinions only and were rejected by Brown &
3 Williamson."

4 What was rejected by Brown & Williamson?

5 A. Would you clarify your question in terms of what
6 was rejected?

7 Q. Let me try again.

8 Your sentence that you wrote states, "B & W did
9 not request any ad campaign along the lines suggested, and
10 the documents prepared by Bates were their opinions only,
11 and were rejected by Brown & Williamson."

12 My question is what was rejected by Brown &
13 Williamson?

14 A. The ad campaign that was recommended or
15 reflected in those documents.

16 Q. Did Brown & Williamson to your knowledge reject
17 all of the opinions that were contained in those documents
18 to which you refer in this memo?

19 A. I have no knowledge of --

20 MR. CLAYTON: I think you answered the question.

21 BY MS. ANDERSON:

22 Q. How did you learn that Brown & Williamson had
23 rejected the ad campaign?

24 A. To the best of my recollection through

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1 discussions with Mr. Wells following his research.

2 Q. So you didn't have any firsthand knowledge, is
3 that correct?

4 A. I did not have any firsthand knowledge, no.

5 Q. Do you recall whether you talked to the Viceroy
6 brand manager with respect to the ad campaigns that had
7 been proposed before you talked to Mr. Radutzky?

8 A. I don't recall.

9 Q. Do you recall any conversation or comment you
10 had with Mr. Radutzky concerning the Bates documents and
11 Bates plans that are not set out in this numbered
12 paragraph 2?

13 MR. CLAYTON: You mean conversations at any time or
14 during the --

15 MS. ANDERSON: During this particular conversation.

16 THE WITNESS: This memorandum is a memorandum of the
17 sense of the conversation. Our conversation on the issue
18 certainly extended beyond the paragraph that is here.

19 BY MS. ANDERSON:

20 Q. Then would you please describe that
21 conversation?

22 A. Well, --

23 MR. CLAYTON: We are speaking now of the November 4
24 conversation, I take it?

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1 BY MS. ANDERSON:

2 Q. At 3:30 p.m.

3 A. I would have or -- see, I was reading, and he
4 was reading from various parts of the FTC report. And as
5 I recall he would read certain parts and would ask me
6 certain questions regarding those parts. I know I read
7 back to him certain parts, and then I provided him with
8 answers in general along the lines of what is written
9 here. This would encapsulate the entire discussion.

10 Q. Do you have any specific recollection of the
11 entire discussion, that's what I am asking now?

12 A. No, I do not.

13 Q. Have you written any other memos; do you have
14 any other notes anywhere that would refresh your
15 recollection as to the specific conversation you had with
16 Mr. Radutzky on November 4, 1981, at 3:30 concerning the
17 Bates proposal?

18 A. I do not.

19 Q. Now, the last sentence of numbered paragraph
20 2 -- well, strike that.

21 You state that, "No ads as described by the memo
22 were ever actually published." Is that statement true?

23 A. I believe it is.

24 Q. What ads described in the memo?

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1 MR. CLAYTON: Can you read the question back, please.

2 (Record read as requested.)

3 THE WITNESS: Ads that reflected the recommendations
4 that were being made by Bates.

5 BY MS. ANDERSON:

6 Q. Do you remember what those were?

7 A. I remember the general discussion in the memo,
8 but I do not specifically recall any ad copy, if you
9 would, or any specific references to how one would do
10 this.

11 Q. Do you have a general recollection of what you
12 were describing here?

13 A. Yes, I do.

14 Q. And what is that?

15 A. Well, the memo raised certain illusions to
16 various associations that cigarette advertisements might
17 take, and it's those associations and the expressions of
18 them in the recommendations that I am referring to.

19 Q. What associations, specifically?

20 A. I remember -- I think it was booze, sex, drugs,
21 bralessness, there coula have been others of that sort,
22 but that's the general distinction.

23 Q. That's what you recall?

24 A. That's what I recall.

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1 Q. Do you recall anything about not emphasizing
2 health related issues?

3 A. I can't recall whether it was related to that or
4 not.

5 Q. Do you recall anything about a free and easy
6 lifestyle?

7 A. With you refreshing my memory, I recall that
8 phrase, yes.

9 Q. So those are the ads that you are talking about
10 in this memo?

11 A. Yes.

12 Q. And in the last sentence you state, "Partly as a
13 result of our dissatisfaction with the specific proposal
14 submitted we terminated Bates work on the Viceroy
15 account."

16 Again, what specific proposal were you referring
17 to?

18 A. The proposal that we run advertising based on
19 those recommendations.

20 Q. Do you know, Mr. Humber, whether in the spring
21 of 1975 Brown & Williamson was aware that the MARC Group
22 was engaging in a research program concerning Viceroy
23 advertising and marketing?

24 A. I have no knowledge of that.

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1 Q. What was the nature of our dissatisfaction, I am
2 using your language, with the proposals submitted that you
3 meant when you talked to Mr. Radutzky?

4 A. Would you restate your question?

5 Q. Okay. Let me try to clarify it.

6 You said to Mr. Radutzky, "Partly as a result of
7 our dissatisfaction with the specific proposal we
8 terminated Bates' work on the Viceroy account."

9 Now, what was the nature of our dissatisfaction?

10 A. I don't have specific knowledge of the totality
11 of the situation, but certainly those recommendations that
12 were made were a part of it. And again it's partly
13 because they had already been informed that they were in
14 serious trouble with regard to the account, and I have no
15 knowledge of those areas.

16 Q. Again, you were repeating to Mr. Radutzky
17 something someone else had told you?

18 A. Yes.

19 MR. CLAYTON: Objection to the form.

20 BY MS. ANDERSON:

21 Q. Who had told you what you were repeating to Mr.
22 Radutzky?

23 MR. CLAYTON: Objection to the form. You may answer.

24 THE WITNESS: Would you repeat the question?

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1 BY MS. ANDERSON:

2 Q. Had someone told you, maybe this will obliterate
3 Mr. Clayton's objection, what to say to Mr. Radutzky about
4 Brown & Williamson's dissatisfaction with this proposal
5 that caused Brown & Williamson's termination of Bates'
6 work on the Viceroy account?

7 MR. CLAYTON: I am going to object to the form
8 because I believe he has testified -- you asked him
9 specifically what was the basis of the information he gave
10 to Mr. Radutzky, and he testified that he had
11 conversations with various people who said that. "Did
12 anyone tell you what to say?" And he said, "We had a
13 discussion." And now I think you may be mischaracterizing
14 his prior testimony.

15 MS. ANDERSON: I was assuming that your objection was
16 a foundation one. I was trying to lay the foundation to
17 obliterate your objection.

18 MR. CLAYTON: There were two objections. There were
19 two bases. One was the foundation, and second, I think,
20 the way that you put it mischaracterized his prior
21 testimony. Maybe if we take the foundation --

22 MS. ANDERSON: I don't think so.

23 MR. CLAYTON: We disagree on this, but that's what I
24 think.

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1 BY MS. ANDERSON:

2 Q. Can you answer the pending question?

3 A. What is it?

4 (Record read as requested.)

5 THE WITNESS: Would you restate it more clearly,
6 please?

7 BY MS. ANDERSON:

8 Q. You told Mr. Radutzky or at least you
9 capitulized when you told Mr. Radutzky that, "Partly as a
10 result of our dissatisfaction with the specific proposals
11 submitted we terminated Bates' work on the Viceroy
12 account."

13 A. Right.

14 Q. Did someone at Brown & Williamson tell you to
15 tell Mr. Radutzky that statement, partly as a result we
16 terminated Bates' work?

17 MR. CLAYTON: I am going to object. I mean, I think
18 what you are getting at is what is the basis, where did he
19 get the information for that statement.

20 I mean, I have no objection to his answering
21 that. The problem is you asked him before did Wells or
22 someone else tell you what to say to Radutzky, and he said
23 nobody told him what to say, we discussed it; and I think
24 you are reviving that distinction in this question.

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1 MS. ANDERSON: But he also indicated when I asked
2 where he got this information, you know, how did he know
3 that, he didn't have firsthand knowledge. I am again
4 characterizing his answer. I don't think it's a
5 mischaracterization. I want to know where he got this
6 information that he imparted to Mr. Radutzky.

7 MR. CLAYTON: I have no objection. I am just trying
8 to draw a distinction to where he got the information and
9 whether the person that he got the information from
10 directed him to say anything specific to Radutzky.

11 If you want to know where he got the
12 information, fine, you can ask that. I just think you are
13 not asking --

14 MS. ANDERSON: Because it's a good one.

15 MR. CLAYTON: Fine, you can ask him that. Also I
16 think you already have the answer to that in this case.
17 If you want to ask it again, you can ask this one again.

18 MS. ANDERSON: Thank you.

19 THE WITNESS: Would you ask me what you want to?

20 BY MS. ANDERSON:

21 Q. Where did you get the information about the
22 determination of Bates that you gave to Mr. Radutzky?

23 A. The information was based on discussions and
24 research that had been conducted primarily by Mr. Wells,

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1 to some extent by me. I cannot recall what he did and
2 what I did in terms of actual research, but this answer
3 was based on that cumulative research and knowleage.

4 Q. Did someone direct you to give that answer?

5 A. They did not.

6 Q. Do you know whether Brown & Williamson was
7 dissatisfied with Bates' proposal because that proposal
8 suggested how to attract starters?

9 A. Again, I don't know the specifics of all the
10 objections Brown & Williamson had with the proposal.

11 Q. But do you know in general the objections?

12 MR. CLAYTON: Asked and answered. I mean, if you
13 want to answer it again.

14 THE WITNESS: I'm not sure what I am supposed to do
15 here.

16 MR. CLAYTON: If you want to answer it again, answer
17 it again.

18 Do you know in general? I believe you testitied
19 as to what the basis of the objections were. You were
20 asked what were those objections. You want to answer it
21 again, I will let you in this case. I will let you answer
22 it again, although again like we have done five or six
23 times in the last twenty minutes we are plowing over the
24 same ground.

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1 THE WITNESS: I believe I characterized my
2 understanding of a part of it, and I have no knowledge
3 beyond that part.

4 BY MS. ANDERSON:

5 Q. You don't know then whether Brown & Williamson
6 was dissatisfied with the Bates proposal because it
7 discussed ways to reach young smokers through advertising?

8 MR. CLAYTON: Objection, you may answer the question.

9 THE WITNESS: I see no reason in answering it again
10 and again and again.

11 BY MS. ANDERSON:

12 Q. So you have answered that question, is that
13 correct?

14 A. I believe I have.

15 Q. Can you quantify, "Partly as a result of our
16 dissatisfaction with the specific proposal we terminated
17 Bates?" In other words, was that proposal ninety percent
18 of the reason Bates was terminated, ten percent? Do you
19 have any way of making that distinction, Mr. Humber?

20 MR. CLAYTON: Could that long question or questions
21 be read back, please? I'd like to hear it one more time.

22 (Record read as requested.)

23 MR. CLAYTON: I will object to the form, but I will
24 not direct the witness not to answer. You may answer if

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1 you understand the question. I object to the form.

2 THE WITNESS: I cannot make any such distinction.

3 BY MS. ANDERSON:

4 Q. Do you know who could?

5 A. I do not.

6 Q. And where did you get that information from, the
7 same place you got the other information you told us
8 about?

9 MR. CLAYTON: Objection. What information are you
10 talking about? The information that he doesn't have which
11 is necessary in order to quantify or what information?

12 MS. ANDERSON: No, the information that's contained
13 in that sentence, "Partly as a result of our
14 dissatisfaction with the specific proposal we terminated
15 Bates."

16 MR. CLAYTON: Again, asked and answered, but you
17 mean, Shane -- he said as you asked him, where did he get
18 the information regarding Bates. He said discussions and
19 research conducted by Wells and himself, his cumulative
20 knowledge. Now, you are going over it again and again and
21 again.

22 I am going to direct him not to answer that
23 because we have gone over it again and again and again.

24 BY MS. ANDERSON:

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1 Q. Are you taking your counsel's advice?

2 A. I do take his advice.

3 Q. To your knowledge did anyone at Brown &
4 Williamson write to the Bates agency --

5 MR. CLAYTON: On any topic?

6 MS. ANDERSON: Let me finish, Mr. Clayton, if you
7 please.

8 MR. CLAYTON: You paused as you often do, and that's
9 why I assumed your question was finished. Excuse me
10 for --

11 MR. MASON: If you will actually listen to the
12 question, Mr. Clayton, you could tell that it was not
13 finished.

14 MS. ANDERSON: I just forgot what I said.

15 MR. CLAYTON: Thank you, counsel. I am glad you have
16 looked up from your book to join us again in the
17 deposition.

18 MR. MASON: I am listening to you. In fact, I am
19 listening better than you are. I can tell you what the
20 question is.

21 MS. ANDERSON: Let's you and I continue this
22 deposition.

23 MR. CLAYTON: You have an extraordinary deposition.

24 MS. ANDERSON: Mr. Clayton, may I ask this witness a

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1 question? He would like to get out of here, please.

2 BY MS. ANDERSON:

3 Q. To your knowledge, Mr. Humber, did anyone at
4 Brown & Williamson write to the Bates agency that Brown &
5 Williamson's dissatisfaction with Bates stemmed from
6 Bates' suggestions about how to attract young people to
7 smoking?

8 A. I do not know.

9 MR. CLAYTON: Shane, may I just ask a question about
10 whether you have thought about what we ought to do about
11 lunch? Can we go off the record for a moment.

12 (Short interruption was had in
13 the proceedings.)

14 MS. ANDERSON: Would you read back the last question
15 and answer.

16 (Record read as requested.)

17 BY MS. ANDERSON:

18 Q. You indicated before during your testimony that
19 during your conversation or conversations with Mr.
20 Radutzky part of what you recall is his reading certain
21 things to you and then your responding --

22 A. Right.

23 Q. -- to him.

24 Let me hand you your Complaint in this action,

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1 specifically Exhibit H or certain portions of the FTC
2 report.

3 MS. ANDERSON: Because it's attached to the
4 Complaint, Lew, I am not going to mark it as an exhibit.

5 THE WITNESS: Could you -- I can't find the reference
6 point you want me to make.

7 BY MS. ANDERSON:

8 Q. I will get to that in just a second.

9 A. Okay, I am sorry.

10 Q. I am finding the same reference point on mine.

11 MR. CLAYTON: Would you like to read these pages?

12 THE WITNESS: No.

13 MR. CLAYTON: Okay.

14 BY MS. ANDERSON:

15 Q. Now, I am reading from 2-18 of Exhibit H of the
16 Complaint which is a portion of the FTC report, Mr.
17 Humber.

18 The statement, "B & W adopted many of the ideas
19 contained in this report in the development of a Viceroy
20 advertising campaign," do you see that?

21 A. Yes.

22 Q. Did Mr. Radutzky read that sentence to you?

23 MR. CLAYTON: If you recall.

24 THE WITNESS: I clearly don't recall.

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1 BY MS. ANDERSON:

2 Q. Do you recall whether he asked you about B & W's
3 adopting many of the ideas contained in this report in an
4 advertising campaign? Was that the area of inquiry?

5 A. It was clearly part of it, yes.

6 Q. And was your response, that's stated in numbered
7 paragraph 2 in Humber Deposition Exhibit 5?

8 A. Paragraph No. 2.

9 MR. CLAYTON: I am only going to object to the form
10 because he said that this memo encapsulates what he said.
11 It doesn't necessarily indicate everything that he said.
12 I just want to draw a distinction between that and an
13 impression because he said -- if you understand the
14 question, you may answer.

15 THE WITNESS: Would you ask the question again,
16 please?

17 MS. ANDERSON: Would you repeat the question?

18 (Record read as requested.)

19 THE WITNESS: I would say in the context of what I
20 have said about this document that it is a partial
21 response.

22 MR. CLAYTON: Let the record reflect that the witness
23 said this document; he pointed to Exhibit 5.

24 BY MS. ANDERSON:

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1 Q. Do you recall any more specifically what you
2 said to Mr. Radutzky?

3 MR. CLAYTON: On what topic?

4 MS. ANDERSON: Brown & Williamson's adoption of many
5 of the ideas contained in the report in the development of
6 a Viceroy advertising campaign, that phrase from the FTC
7 report.

8 THE WITNESS: Well, I recall that I discussed in -- I
9 believe it was the subsequent conversation, was the
10 subsequent conversation there was an additional response
11 in the area of your question.

12 BY MS. ANDERSON:

13 Q. Concerning a Viceroy campaign?

14 MR. CLAYTON: Objection. There is no campaign that
15 was adopted by Viceroy if you are referring just to the
16 statement you read. It's an asked and answered question.

17 MS. ANDERSON: Well, I was trying to clarify or to
18 understand Mr. Humber's answer which I didn't.

19 BY MS. ANDERSON:

20 Q. We will get to your subsequent memorandum in a
21 few minutes, Mr. Humber, but I am trying to --

22 A. I believe there are parts of that response that
23 relate to this question in a general way, but not having
24 it in front of me --

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1 Q. Set out in the second memorandum you wrote,
2 right?

3 A. I believe so.

4 Q. I think I paperclipped another page of this
5 report at the top of Page 2-20 of Exhibit H which is the
6 Complaint. The FTC report states, "B & W documents also
7 show that it translated the advice on how to attract young
8 starters into an advertising campaign featuring young
9 adults in situations that the vast majority of young
10 people probably would experience and in situations
11 demonstrating adherence to a free and easy hedonistic
12 lifestyle."

13 Did Mr. Radutzky read that sentence to you?

14 A. I don't recall.

15 Q. Do you recall any discussion about that
16 particular portion of the FTC report with Mr. Radutzky?

17 MR. CLAYTON: Objection on the ground that we have
18 gone over this. You have asked him about this.

19 MS. ANDERSON: I asked him generally, Lew. I didn't
20 ask him specifically, and now I'm asking more
21 specifically.

22 MR. CLAYTON: Saying that he testified specifically
23 on this point. Again, if you want to ask it again, he can
24 answer it again.

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1 MS. ANDERSON: He didn't have your Exhibit H in front
2 of him to the extent that this refreshes his recollection
3 which is or was at least fuzzy.

4 MR. CLAYTON: If you want to ask him if it refreshes
5 his recollection, fine.

6 MS. ANDERSON: Fine, I am asking him.

7 MR. CLAYTON: Fine.

8 THE WITNESS: Would you ask me?

9 MS. ANDERSON: Would you read my question again,
10 please?

11 (Record read as requested.)

12 THE WITNESS: Referring specifically to that
13 paragraph?

14 BY MS. ANDERSON:

15 Q. That language that I just read.

16 MR. CLAYTON: This is to what he already testified
17 because you want to know if that refreshes his
18 recollection, is that correct?

19 MS. ANDERSON: Right.

20 THE WITNESS: I don't recall specific references to
21 this particular paragraph in either his conversation or
22 mine.

23 BY MS. ANDERSON:

24 Q. He may have asked about it, right?

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1 MR. CLAYTON: Objection to the form.

2 THE WITNESS: I can't recall what he referred to or
3 what I referred to in terms of our conversations. These
4 were extremely long conversations.

5 BY MS. ANDERSON:

6 Q. Do you know how long this November 4th
7 conversation took?

8 A. To the best of my recollection it would -- I
9 would recall it as somewhere between forty-five minutes
10 and an hour and a half, that would be the best I could.

11 Q. Is it your understanding, Mr. Humber, that one
12 of the reasons for Brown & Williamson's dissatisfaction
13 with the Bates proposal that is described in your
14 memorandum was that Bates suggested how to attract young
15 people to smoking?

16 MR. CLAYTON: I am going to object to this because we
17 have gone over before lunch what does he recall about the
18 basis of the objection.

19 You asked him specifically about starters; you
20 asked him to quantify; and he told you that. He gave you
21 his recollection of what he recalls, and he didn't recall
22 further.

23 MS. ANDERSON: I didn't ask the specific question,
24 though.

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1 MR. CLAYTON: If this specific question refreshes his
2 recollection, he may testify.

3 THE WITNESS: Will you ask your question?

4 (Record read as requested.)

5 THE WITNESS: The only thing I can speak of with my
6 knowledge is that the total recommendations were part of
7 the reasons that Brown & Williamson rejected the proposal.

8 I cannot speak of specifics that were in the proposal.

9 BY MS. ANDERSON:

10 Q. Do you know if the Bates agency handled the
11 advertising for any account other than Viceroy in 1981?

12 A. I do not.

13 MR. CLAYTON: You have answered the question.

14 BY MS. ANDERSON:

15 Q. Going to numbered paragraph 3 of Humber
16 Deposition Exhibit 5, it's a discussion of Fact.

17 Fact is a cigarette that is marketed by Brown & Williamson, correct?

19 A. NO.

20 Q. It was at one time, right?

21 A. Yes.

22 Q. It is no longer manufactured and sold by Brown &
23 Williamson, right?

24 A. That is correct.

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1 Q. At the time you discussed Fact with Mr.
2 Radutzky, had you seen a copy of the memorandum on which
3 the FTC comments concerning Fact advertising were based?

4 A. Yes.

5 Q. Did Mr. Radutzky ask whether or not the
6 statements in the FTC report with respect to Fact
7 advertising were true?

8 A. I don't recall his specific question.

9 Q. By the way, did he ask you whether or not the
10 statements about the Viceroy strategy in the FTC report
11 were true?

12 A. Again, I don't recall his specific question.

13 Q. Did you send any Fact ads to Mr. Radutzky?

14 A. I believe I did.

15 Q. Did you send a cover letter with them?

16 A. I cannot recall.

17 Q. Do you remember what ads you sent to him?

18 A. I believe I sent him two representative samples,
19 one of the first campaign and one of the second campaign.

20 Q. Could you describe those ads?

21 A. No, not at my own recall.

22 Q. Did he ask you for Viceroy ads?

23 A. I cannot recall whether he asked me specifically
24 for Viceroy ads.

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1 Q. Did you send him any Viceroy ads?

2 A. I do not believe I did.

3 Q. Did you look for any Viceroy ads to send him?

4 A. I cannot recall whether I did.

5 MR. CLAYTON: You have answered the question.

6 THE WITNESS: All right.

7 BY MS. ANDERSON:

8 Q. Do you remember whether you sent Mr. Radutzky
9 any ads other than Fact ads?

10 A. I believe I sent him some Kool ads.

11 Q. Any others that you recall?

12 A. I don't recall any others.

13 Q. On Page 2 of Humber Deposition Exhibit 5 you
14 state, and I quote, "I attempted to avoid the Kool
15 discussion, but he asked about it specifically. That will
16 be dealt with today."

17 A. Right.

18 Q. What do you mean you attempted to avoid the Kool
19 discussion?

20 A. I had prepared to talk with him on certain
21 things or certain subjects that he had alluded to in
22 previous conversations. I was totally unprepared to deal
23 with the Kool questions and, therefore, was not able to do
24 so.

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1 Q. And is that what you told him?

2 A. I believe I did.

3 Q. When you say that will be dealt with today --

4 A. Right.

5 Q. -- I infer from that statement, Mr. Humber, that
6 this memorandum was not written on November 4th but instead
7 was written on November 5th, is that your recollection?

8 MR. CLAYTON: Objection to the form of the question.

9 He has testified as to when he wrote this affidavit. He
10 has testified he wrote this memorandum. He has testified
11 quite clearly that he wrote it on the 4th.

12 You asked him that specifically. If you want to
13 point him to that and say does that change your
14 recollection, it's okay, but I object to a question in
15 which you say you infer, in your own opinion, as counsel
16 for CBS, that this means that his prior testimony is
17 incorrect.

18 MS. ANDERSON: Well, I guess I won't make you respond
19 to what I infer.

20 MR. CLAYTON: Thank you.

21 BY MS. ANDERSON:

22 Q. Mr. Humber, however, does this paragraph change
23 your testimony at all as to when you wrote this
24 memorandum?

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1 A. No, it does not.

2 Q. When you say that will be dealt with today, did
3 you have a second conversation with Mr. Radutzky later in
4 the day on November 4th?

5 A. I did not.

6 Q. What do you mean that will be dealt with today?

7 A. I don't know specifically. I believe your
8 original question asked me when I drafted the memorandum.
9 Looking at the memorandum and looking at the time that was
10 involved there, I expect that I drafted it, but it was not
11 typed until the next day.

12 Q. And then is it your testimony that you added
13 this sentence, "That will be dealt with today," on the
14 date it was typed?

15 A. I cannot recall.

16 Q. When did you throw away the notes, if you did,
17 from which you drafted this memorandum?

18 A. After either this conversation or the
19 conversation that occurred the next day.

20 Q. The last paragraph in Humber Deposition Exhibit
21 5 indicates that, "Following responses to the specifics,
22 the conversation took a rambling turn on an off-the-record
23 basis on a number of issues."

24 What were those issues, what else was said, Mr.

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1 Humber, between you and Mr. Radutzky?

2 A. I can't recall specifically what was said, but I
3 can give you a general understanding of that conversation.

4 Q. I would like your best recollection.

5 A. Well, my best recollection is that Mr. Radutzky
6 began a line of questioning that if what Brown &
7 Williamson was saying was true why had the FTC said all of
8 these horrible things about Brown & Williamson,

9 I believe I responded in the sense that I was
10 not prepared to conduct an on-the-record conversation with
11 him characterizing my feelings about the motivations of
12 the FTC, but that I would be willing to do so on an
13 off-the-record basis to which he agreed.

14 I then discussed previous relationships between
15 the FTC and Brown & Williamson and specifically that
16 relationship that was engendered by the delivery of the
17 subpoenaed documents. And I believe I indicated two
18 general areas here, one of a feeling of embarrassment by
19 the FTC at the way Brown & Williamson had conducted itself
20 regarding delivery of those documents, and second my
21 feelings that there were members of the FTC staff who were
22 sworn anti-smokers and intended to pursue that anywhere it
23 led them.

24 That's the general sense of that. He then made

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1 some comment regarding Phillip Morris to the point I
2 understand -- I can't recall whether he said sources, but
3 something to the effect that he understood that Phillip
4 Morris was generally regarded as a much more aggressive
5 company than the others, and I recall a statement to the
6 effect your activities are somewhat tame in comparison.

7 My response to that was something of a joke in
8 that things take on a different perspective if you live on
9 Park Avenue in New York. And those are the parts of that
10 conversation that I recall.

11 Q. And that was all off the record, right?

12 A. Yes.

13 Q. Did you tell Mr. Radutzky off the record that
14 you believed the FTC report was not true?

15 A. I believe that I characterized it as a masterful
16 piece of propaganda.

17 Q. To the best of your recollection, Mr. Humber,
18 have you testified to the entirety of your conversation
19 with Mr. Radutzky on November 4, 1981?

20 A. Yes, to the extent that I can recall that
21 conversation and understanding that I have only been able
22 to recall it in general circumstances; that I cannot
23 recall actual dialogue as such.

24 Q. That's all I can expect is what you recollect

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1 right now.

2 A. Then the answer is yes.

3 MS. ANDERSON: Would you mark this as Humber
4 Deposition Exhibit 6, please.

5 (Exhibit No. 6 marked as
6 requested.)

7 BY MS. ANDERSON:

8 Q. Do you recall having a conversation with Mr.
9 Radutzky on November 5, 1981?

10 A. Yes.

11 Q. And do you recall having prepared a memorandum
12 of that particular conversation, that one that took place
13 on November 5th?

14 A. Yes.

15 Q. Let me hand you a document that has been marked
16 as Humber Deposition Exhibit No. 6.

17 MS. ANDERSON: Lew, I am giving this to Mr Humber.

18 BY MS. ANDERSON:

19 Q. This is a memorandum headed "Press Query" dated
20 November 5, 1981, 4:00 o'clock, and ask whether or not you
21 drafted this memorandum?

22 A. I did.

23 Q. Do you remember when you drafted it?

24 A. Shortly after the conversation with him on the

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1 5th.

2 Q. Ana you drafted this in the ordinary course of
3 business, right?

4 A. Yes.

5 Q. Does this memorandum accurately reflect your
6 conversation with Mr. Radutzky on November 5th?

7 A. It accurately reflects the general sense of
8 those points that it covers, yes.

9 Q. Do you remember who called whom on November 5th?

10 A. No, I do not.

11 Q. Were you in your office when you talked to him
12 at 4:00 o'clock on the 5th of November?

13 A. I presume that I was.

14 Q. Was anyone else present?

15 A. No.

16 Q. You indicate in this memorandum that as a
17 follow-up to his query of November 4th you responded to
18 Mr. Radutzky's request for a specific response to Footnote
19 49.

20 Do you remember without looking in the other
21 documents what Footnote 49 is?

22 A. I do not.

23 Q. Do you remember that Footnote 49 had to do with
24 Kools?

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1 A. I don't recall that. Looking at this memo and
2 the responses given I believe that, but I don't recall
3 specifically.

4 Q. Did you tape record the November 5th
5 conversation with Mr. Rautzky?

6 A. I did not.

7 Q. Between the time you talked to Mr. Rautzky on
8 November 4th and the time you talked to him on November
9 5th, had you discussed with anyone at Brown & Williamson
10 how you would respond to his inquiry about Footnote 49?

11 A. I believe I had a conversation with Mr. Wells
12 discussing the additional areas that he wanted to get
13 into, yes.

14 Q. Do you remember where that conversation took
15 place?

16 A. I do not.

17 Q. Or when?

18 A. I do not.

19 Q. Or who was present?

20 A. Best of my recollection only Mr. Wells and
21 myself.

22 Q. Do you remember what was said during that
23 conversation?

24 A. No, not specifically.

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1 Q. Do you have a general recollection?

2 A. My general recollection is that we discussed the
3 additional points that Radutzky wished to have information
4 about, and I can't recall how many points those were.

5 Q. If I gave you a copy of Footnote 49 of the FTC
6 report, would that help your recollection?

7 A. Yes, it would.

8 Q. Let me hand you a copy of Footnote 49.

9 MS. ANDERSON: I don't want to mark that, Lew, as a
10 deposition exhibit unless you insist.

11 MR. CLAYTON: Well, do you mind if I take a look at
12 the pages to see where it comes from?

13 MS. ANDERSON: I don't. I certainly don't insist.

14 THE WITNESS: I've read that footnote.

15 BY MS. ANDERSON:

16 Q. After having read the Footnote 49, is your
17 recollection refreshed as to any inquiries or to the
18 inquiries that Mr. Radutzky made to you about Footnote 49?

19 A. That corresponds to my note and the response
20 that I gave him, so, yes, to that extent.

21 Q. Did you prior to the time you talked with Mr.
22 Radutzky about Footnote 49 read the documents that are
23 described in that footnote?

24 A. I do not recall reading full documents with

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1 regard to this but merely reading the excerpts that were
2 referred to. I do not recall reading complete documents
3 in this.

4 Q. The second paragraph of Humber Deposition
5 Exhibit 6 sets forth your discussion with Mr. Radutzky
6 about focus group sessions?

7 A. Right.

8 Q. Do you know whether Brown & Williamson has ever
9 mounted an ad campaign solely on the basis of focus group
10 information?

11 A. On the basis of my knowledge, I do not.

12 Q. On the basis of your knowledge, is focus group
13 information utilized by Brown & Williamson in any fashion
14 in its advertising campaigns?

15 A. Depends on what you mean by any fashion.

16 Q. Well, it's a fairly broad question, so when I
17 say any fashion, I guess I mean just that.

18 A. Well, it would -- my answer would to some extent
19 depend on what you are referring to.

20 MR. CLAYTON: If you don't understand the question,
21 you can always ask for a clarification.

22 THE WITNESS: I would like to request for a
23 clarification.

24 BY MS. ANDERSON:

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1 Q. Let's say in 1981, to your knowledge, did Brown
2 & Williamson utilize focus group information in the
3 development or publication of any ad campaign?

4 A. To my knowledge, I don't know.

5 Q. With respect to Viceroy advertising campaigns
6 and the use of focus group information in such campaigns,
7 do you know who or of whom I could ask the question how
8 this focus group information is utilized?

9 MR. CLAYTON: If at all.

10 BY MS. ANDERSON:

11 Q. Or whether it's utilized and get an answer.

12 A. I do not. If you are referring to an '81
13 situation, you know, again, it depends on the timing of
14 what you are talking about as to who would have been there
15 at that time. I just don't know.

16 Q. In 1981 do you know what position, if any, Mr.
17 R.L. Johnson had at Brown & Williamson?

18 A. I do not.

19 Q. Was he employed by Brown & Williamson at that
20 time?

21 A. I don't believe so.

22 Q. Had he been employed by Brown & Williamson in
23 1978?

24 A. I don't know on my own personal knowledge.

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1 Q. On what did you base your statement to Mr.
2 Radutzky that Mr. R.L. Johnson had no authority to launch
3 an ad campaign?

4 A. On conversations with Kendrick Wells.

5 Q. Did you talk to Mr. Johnson at all?

6 A. No, I don't believe I know Mr. Johnson.

7 Q. Do you know to what use a long-range planning
8 document is put?

9 A. No.

10 Q. Did you know at the time you talked to Mr.
11 Radutzky on November 5, 1981?

12 MR. CLAYTON: If you recall.

13 THE WITNESS: Specifically, no.

14 BY MS. ANDERSON:

15 Q. Is the characterization of the R.L. Johnson memo
16 as a long-range planning document your characterization,
17 Mr. Humber?

18 A. It would have been a characterization that came
19 out of my discussions with Mr. Wells, and to what extent
20 he contributed to language or I did or by speaking ad-lib,
21 I can't recall.

22 Q. On Page 2 of Humber Deposition Exhibit 6 you
23 wrote, "I think the reporter sympathized with our
24 position."

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1 On what did you base that statement?

2 A. On the questions he asked and on my
3 interpretation of his demeanor throughout those
4 conversations.

5 Q. And when you wrote sympathized with our
6 position, what position were you referring to?

7 A. The position that a number of charges had been
8 made by the FTC with regard to Brown & Williamson, and at
9 the very least there were responses to those charges which
10 put a different light on the story.

11 Q. You also wrote that, "No matter how fair he is
12 the effect of his broadcasts will be largely negative to
13 those viewers who see them."

14 What do you mean by that?

15 A. That the impression that viewers would have who
16 watched the broadcast would be of charges made against a
17 private company by a government watchdog agency; and,
18 therefore, they would be negative implications.

19 Q. Was that just your opinion, Mr. Humber?

20 A. That was my opinion.

21 Q. Was that Mr. Wells' opinion also?

22 A. I don't know what Mr. Wells' opinion was.

23 Q. Were you just covering yourself with that last
24 paragraph?

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1 MR. CLAYTON: I will object to the form, not only is
2 it argumentative, covering himself from what?

3 BY MS. ANDERSON:

4 Q. Do you understand what I mean, Mr. Humber?

5 A. I understand what you mean, and I can't respond
6 to a question like that. If you want to ask me why I
7 wrote this paragraph, I will answer the question.

8 Q. All right. Why did you write the paragraph?

9 A. I believe the paragraph was a fair
10 representation of my feelings about the reporter's
11 indications and what the effect would be.

12 Q. Is it your opinion that any time a report is
13 issued by a government watchdog group about a private
14 business that the public who hears about this report is
15 going to have a negative reaction?

16 MR. CLAYTON: Objection to the form of the question.
17 He testified previously that there were charges made, and
18 the public would have a perception that a government
19 agency was making charges. And now attempting to link
20 that with another question in which you take the element
21 of charges out, you just say any time a report is made
22 about a private company isn't negative, that's the
23 substance of my objection.

24 If he can answer, I will not direct him not to

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1 answer. He may answer.

2 THE WITNESS: Will you ask the question again?

3 MS. ANDERSON: Please read the question, please.

4 (Record read as requested.)

5 THE WITNESS: The answer to that is no.

6 BY MS. ANDERSON:

7 Q. With whom did you make arrangements to have the
8 WBBM broadcast taped?

9 A. I don't believe I made those arrangements.

10 Q. When you say we have made arrangements to have
11 the broadcast taped, who was the we to whom you were
12 referring?

13 A. Department of corporate affairs.

14 Q. Did someone make arrangements to have the
15 broadcast taped?

16 A. I believe they did.

17 Q. Do you know who made those arrangements?

18 A. I don't.

19 Q. Do you know with whom the arrangements were
20 made?

21 A. I do not.

22 Q. Did you ever receive a copy of the tape of the
23 broadcast?

24 A. Yes, I did.

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1 Q. Did you receive a transcript of the tape of the
2 broadcast rather?

3 A. I don't recall whether we received it or made
4 it.

5 Q. Have you ever heard of an advertising agency in
6 Chicago called Cunningham & Walsh?

7 A. I have.

8 Q. Do you know whether arrangements were made
9 through Cunningham & Walsh to have the WBBM broadcast
10 taped?

11 A. I can't recall.

12 Q. By the way, did you send Kool ads to Mr.
13 Radutzky?

14 A. I believe I did..

15 Q. You testified earlier as to some off-the-record
16 conversations you and Mr. Radutzky had on the 4th of
17 November, 1981, did you have any off-the-record
18 conversations on the 5th of November, 1981?

19 A. I can't recall.

20 Q. Other than the summary of your conversation with
21 Mr. Radutzky as set forth in Deposition Exhibit 6, do you
22 recall any other parts of the conversation either what you
23 said to him or what he said to you with Mr. Radutzky on
24 the 5th of November?

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1 A. This conversation, no.

2 MS. ANDERSON: Mark this as Humber Group Exhibit 7.

3 (Exhibit No. 7 marked as
4 requested.)

5 BY MS. ANDERSON:

6 Q. Let me hand you an exhibit that has been marked
7 as Humber Group Exhibit No. 7. I will represent to you,
8 Mr. Humber, that these documents were produced to us by
9 Brown & Williamson's files, and after you have looked them
10 over I will have a few questions for you.

11 THE WITNESS: May we go off the record?

12 MR. CLAYTON: Sure.

13 (Discussion had off the record.)

14 THE WITNESS: This is November the 2nd, and I have
15 got 9th, 10th, and 11th. They all seem to be some form of
16 Walter Jacobson's broadcast.

17 BY MS. ANDERSON:

18 Q. Before you go further, let me back up and ask a
19 few questions.

20 Have you seen these documents before today?

21 A. I don't recall seeing these, no.

22 Q. Do you communicate with an outfit called
23 Burrelle's, that's spelled B-u-r-r-e-l-e-'-s, T.V.Clips?

24 A. We have; I don't know if we still do.

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1 Q. Do you remember communicating with them in
2 November of 1981?

3 A. I do not.

4 Q. Did you direct anyone in the corporate affairs
5 department to communicate with that outfit?

6 A. I'm sure I did or -- well, I don't know. I am
7 sure that I asked someone at my department to obtain tapes
8 and possibly transcripts, but I don't recall specifying
9 anybody. I don't normally get involved in how they do it.

10 Q. And you don't remember receiving these documents
11 that have been marked as Humber Group Exhibit 7, is that
12 right?

13 A. I don't recall, no.

14 Q. Or having distributed them?

15 MR. CLAYTON: Objection, asked and answered. You may
16 answer again.

17 THE WITNESS: These documents as presented are not
18 familiar to me, and, particularly looking at these three
19 with Mr. Jacobson's signature and face I don't recall
20 seeing these documents in this form.

21 BY MS. ANDERSON:

22 Q. There came a time when you learned of the
23 substance of WBBM TV's broadcast about Viceroy
24 advertising, did there not, Mr. Humber?

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1 A. Did I learn of the -- would you repeat the
2 question?

3 Q. There came a time when you learned what the
4 substance of WBBM's broadcast about Viceroy advertising
5 was, isn't that correct?

6 A. Yes.

7 Q. Do you remember when you first learned of the
8 substance of the broadcast?

9 A. No, I don't.

10 Q. Was it shortly after November 11, 1981?

11 A. I'm reasonably sure that it was, yes.

12 Q. Do you recall having discussions with anyone at
13 Brown & Williamson about that broadcast?

14 A. When you say that broadcast, are you referring
15 to all three?

16 Q. No, I am referring to the broadcast that has
17 been characterized in this litigation as the Viceroy
18 Cigarette perspective.

19 MR. CLAYTON: I am not sure -- I mean, we have used
20 that term in litigation, but Mr. Humber hasn't sat with us
21 or used the documents. I am not sure that's the easiest
22 way to refer.

23 BY MS. ANDERSON:

24 Q. I show you to which I am referring to that

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1 document which is a part of Humber Group Exhibit 7 which
2 has the base number 049253 and 049254.

3 A. This specific broadcast?

4 Q. Yes.

5 A. And that alone?

6 Q. Yes.

7 A. Okay, and what is your question?

8 Q. Whether or not you discussed the contents of
9 that broadcast with anyone at Brown & Williamson?

10 A. Yes, I did.

11 Q. When did you first discuss it?

12 A. Shortly after viewing the tapes or reading a
13 transcript of the tapes.

14 Q. Which?

15 A. I cannot recall.

16 Q. With whom did you discuss it?

17 A. I cannot recall with specificity --

18 Q. Did you discuss --

19 A. -- either who or how many.

20 Q. -- did you discuss it with Mr. Wyatt?

21 A. I'm sure I did.

22 Q. But you have no specific recollection of the
23 conversation or conversations, is that correct?

24 A. That is correct.

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1 Q. Did you discuss the broadcast with Mr. Wells?

2 A. Again, I'm sure I did.

3 Q. And again, you have no specific recollection, is
4 that correct?

5 A. Right.

6 Q. Do you remember how many times you had a
7 conversation about the Walter Jacobson broadcast, the
8 transcript of which you have before you?

9 A. No.

10 Q. Did you discuss the Walter Jacobson broadcast
11 with anyone at the Tobacco Institute?

12 A. I don't believe I did.

13 Q. Do you know if anyone in the corporate affairs
14 department had a discussion about Walter Jacobson's
15 broadcast with the Tobacco Institute?

16 A. I can't recall.

17 Q. Do you know if anyone at Brown & Williamson had
18 a discussion with the Tobacco Institute about the
19 substance of Walter Jacobson's broadcast?

20 A. Again, I can't recall.

21 Q. In your opinion, Mr. Humber, does the Walter
22 Jacobson broadcast, the transcript of which you have
23 before you, damage Brown & Williamson's reputation?

24 A. Well, again, I would have to respond in the same

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1 way that I have responded to your questions before. The
2 substance of Mr. Jacobson's broadcast is very negative,
3 but I can't tell you whether or not it damaged our
4 reputation.

5 Q. Were you consulted before this lawsuit was
6 filed?

7 A. Consulted on what?

8 Q. On whether or not the lawsuit should be filed?

9 MR. CLAYTON: Consulted by whom?

10 MS. ANDERSON: Anyone.

11 THE WITNESS: I don't know whether I could
12 characterize it as consulted. I was a participant in
13 conversations, yes.

14 BY MS. ANDERSON:

15 Q. About the lawsuit?

16 A. Yes.

17 Q. Before it was filed?

18 A. Yes.

19 Q. With whom did you participate in conversations
20 about a lawsuit before it was filed?

21 A. I can't recall specifically. I believe Mr.
22 Wells, Mr. Peoples, Mr. Hughes, I don't recall others.

23 Q. Do you remember how many discussions you had
24 with either one or all three of those gentlemen?

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1 A. No, I don't.

2 Q. Did you recommend to anyone that a lawsuit be
3 filed?

4 MR. CLAYTON: I am going to direct the witness not to
5 answer that question because his testimony touches upon
6 and concerns and is privileged communications. It
7 concerns the substance of communications that he had with
8 Mr. Wells who is a lawyer at Brown & Williamson, Mr.
9 Pepples who is vice president and general counsel on the
10 question of whether a suit should be brought; and that's a
11 conversation that pertains directly to the giving of legal
12 advice, and it's privileged, and I will direct him not to
13 answer on the substance of any of these conversations in
14 which either Mr. Wells or Mr. Pepples or any other
15 attorney at Brown & Williamson was present.

16 MS. ANDERSON: So you believe the question did you
17 recommend filing a lawsuit goes to the substance rather
18 than the subject matter of a conversation, is that right?

19 MR. CLAYTON: Yes, I believe it directly goes to what
20 the subject matter of the conversation was, whether a suit
21 should be brought; and now asking in the context within
22 that conversation did you say a suit should be brought or
23 did you say suit shoulan't be brought, and, yes, I would
24 say that goes directly. It asks specifically and

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1 explicitly for the substance of that statement, and I will
2 direct him not to answer.

3 BY MS. ANDERSON:

4 Q. Do you take your lawyer's advice, Mr. Humber?

5 A. I would.

6 MR. CLAYTON: Okay, off the record.

7 (Discussion had off the record.)

8 BY MS. ANDERSON:

9 Q. Mr. Humber, have you ever tape recorded a
10 conversation with a reporter?

11 A. I have.

12 Q. When?

13 A. I can't recall.

14 Q. Under what circumstances?

15 A. I can't recall specific circumstances.

16 Q. Have you done it more than once?

17 A. Yes.

18 Q. Have

19 that you were taping a conversation?

20 A. I have not.

21 Q. Have you in

22 that you were taping a conversation?

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1 the eavesdrop laws do not apply?

2 A. I don't understand your question.

3 Q. Well, are you aware that for example Illinois
4 law prohibits your unilateral taping of a phone
5 conversation?

6 A. I am not aware of that.

7 MS. ANDERSON: Would you mark this, please, as Humber
8 Deposition Exhibit 8.

9 (Exhibit No. 8 marked as
10 requested.)

11 BY MS. ANDERSON:

12 Q. I hand your counsel and then you a copy of a
13 document that has been marked as Humber Deposition Exhibit
14 8.

15 I ask you to review this, please; I will have a
16 few questions for you.

17 A. Okay.

18 Q. Mr. Humber, is Deposition Exhibit No. 8 a
19 transcript of a tape recorded conversation you had with
20 the reporter from the London Times?

21 A. I don't recall.

22 Q. Do you recall that this document, Exhibit No. 8,
23 is a transcript of a tape recorded conversation you had
24 with a reporter?

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1 A. It seems to be.

2 MR. CLAYTON: Do you recall whether it is or it
3 isn't? What it seems to be wasn't the question.

4 THE WITNESS: I don't recall, no.

5 BY MS. ANDERSON:

6 Q. Have you seen this document before today, Mr.
7 Humber?

8 A. I don't recall it.

9 Q. And reading the document did not refresh your
10 recollection?

11 MR. CLAYTON: He has read the document before
12 answering your question.

13 THE WITNESS: I don't recall the document.

14 BY MS. ANDERSON:

Q. Then let me hand you some others that may help.

16 Do you recall that the London Times printed a
17 story concerning the FTC report?

18 A. I did not until you brought it up.

19 MS. ANDERSON: Would you mark this document, please,
20 as Humber Deposition Exhibit No. 9.

21 (Exhibit No. 9 marked as
22 requested.)

23 BY MS. ANDERSON:

24 Q. I hand you a copy of a document that has been

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1 marked as Humber Deposition Exhibit No. 9. This is a
2 document that bears Bates number 049212 produced to CBS
3 from files of Brown & Williamson.

4 Please review this document, and I will ask you
5 a few questions about it.

6 A. Okay.

7 Q. Do you remember having seen the article "Selling
8 No Smoke Without Desire" that has been marked as Humber
9 Deposition Exhibit 9 before today?

10 A. I recall it now that you have shown it to me,
11 yes.

12 Q. Now that I have shown you Humber Deposition
13 Exhibit 9, is your recollection refreshed as to whether
14 Humber Deposition Exhibit 8 is a telephone conversation
15 with the reporter from the London Times whose byline
16 appears on Deposition Exhibit 9?

17 A. I cannot recall.

18 Q. Do you doubt, Mr. Humber, that Deposition
19 Exhibit 8 is a transcript of a tape recorded conversation
20 you had with someone?

21 MR. CLAYTON: Objection to the form. He says he
22 doesn't recall seeing the document. How can he answer
23 whether he doubts or he doesn't doubt.

24 BY MS. ANDERSON:

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1 Q. Can you answer the question, Mr. Humber?

2 A. I don't recall.

3 Q. In your opinion, Mr. Humber, did the article
4 "Selling No Smoke Without Desire" that appeared in the
5 London Times damage Brown & Williamson's reputation?

6 A. If I couldn't answer the question before, I
7 certainly couldn't answer it with regard to this.

8 Q. Do you know who a man named Stewart Lockhart is?

9 A. I have heard the name, but I cannot identify him
10 specifically.

11 MS. ANDERSON: Mark this, please, as Humber
12 Deposition Exhibit 10.

13 (Exhibit No. 10 marked as
14 requested.)

15 BY MS. ANDERSON:

16 Q. Let me hand you a copy of a document that has
17 been marked as Humber Deposition Exhibit No. 10. This is
18 a document produced to CBS by Brown & Williamson in this
19 litigation. It's a letter on a letterhead of B.A.T.
20 Industries dated 31st of March 1982, indicated signature
21 by C.H. Stewart Lockhart, Chairman and Managing Director
22 of British-American Tobacco Company, Limited, Director of
23 B.A.T. Industries.

24 Have you seen a copy of this document before

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1 today, Mr. Humber?

2 A. I believe I have seen it.

3 Q. Do you remember when you first saw it?

4 A. I do not.

5 Q. I direct your attention to the bottom of Page 2
6 of Humber Deposition Exhibit 10 in which the writer
7 states, "In summary, therefore, the Times has published as
8 topical news a story which is many months old, packed with
9 innuendo, inaccurate, and damaging to the reputation of
10 this company and its subsidiaries."

11 Do you agree with the writer's statement, Mr.
12 Humber?

13 MR. CLAYTON: I will object in part in that you
14 already asked him whether he thought that the article is
15 damaging to the reputation of Brown & Williamson. This
16 company as used in this letter, of course, is B.A.T.
17 Industries which is an English company.

18 MS. ANDERSON: And its subsidiaries.

19 MR. CLAYTON: You have already asked him and received
20 an answer as to Brown & Williamson's subsidiary B.A.T.
21 Industries.

22 THE WITNESS: What is your question?

23 MS. ANDERSON: Could you read the question, please.

24 (Record read as requested.)

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3 Q. Did you ever draft a suggested letter or letters
4 to be used to send to the Editorial Board of the London
5 Times with respect to the article "Selling No Smoke
6 Without Desire"?

7 A. I can't recall.

8 MS. ANDERSON: Would you mark this document please as
9 Humber Deposition Exhibit 11?

10 (Exhibit No. 11 marked as
11 requested.)

12 BY MS. ANDERSON:

13 Q. I've handed to your counsel a copy of a document
14 that has been marked at Deposition Exhibit No. 11. I
15 would ask you to look at it, please?

16 A. Are these the same?

17 Q. No.

18 MR. CLAYTON: The fact that they have been marked
19 together doesn't necessarily mean they are the same
20 document.

21 THE WITNESS: Okay.

22 BY MS. ANDERSON:

23 Q. You've looked at Deposition Exhibit 11, is that
24 correct?

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1 A. I have.

2 Q. Have you seen this document before today?

3 A. I cannot recall. There seems to be two
4 documents.

5 Q. As I reviewed this document it's a four --
6 five-page document. There are two draft letters. I would
7 so characterize them for the record. Do you recall having
8 seen --

9 MR. CLAYTON: Well I will object to that
10 characterization if it's going to be taken to mean by you
11 or the witness that these documents actually are
12 connected. I mean, they have consecutive Bates numbers,
13 but, otherwise, I don't see any indication that they were
14 prepared at the same time or by the same person or
15 anything like that. They begin and end separately.

16 MS. ANDERSON: I wasn't indicating that they were.
17 They are two draft letters. I see no date of preparation
18 on here. I'm about to get to that with the witness.

19 BY MS. ANDERSON:

20 Q. At any rate, Mr. Humber, do you recall having
21 seen any of these pages before?

22 A. I cannot recall in these forms, no.

23 Q. And you don't remember -- strike that.

24 Having looked at Deposition Exhibit 11 and

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1 Deposition Exhibit 10, which was Mr. Lockhart's letter,
2 and Deposition Exhibit 9, which is the "Selling No Smoke
3 Without Desire" article, do you -- is your memory
4 refreshed at all as to whether you drafted a letter for
5 use by anyone in responding to the London Times article?

6 A. My specific recall, no, I cannot recall.

7 Q. Do you know if anyone in the corporate affairs
8 department drafted such a letter?

9 A. I can't recall.

10 Q. Do you remember having any conversations with
11 Dr. Hughes about the "Selling No Smoke Without Desire"
12 article?

13 A. No, I can't recall.

14 Q. Turn to the fourth page of Humber Deposition
15 Exhibit 11 which appears to be the second page of the
16 second draft letter.

17 MR. CLAYTON: Maybe if you could give the number?

18 MS. ANDERSON: 049200, that's the Bates number on the
19 document.

20 BY MS. ANDERSON:

21 Q. Paragraph numbered 3 on this page contains the
22 following statement, "The FTC staff made many erroneous
23 assumptions to fit preconceived anti-tobacco biases,
24 releasing parts of documents that fit the slander,

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1 relevant or not, and supressing parts of documents that
2 would give the lie to the propaganda effort."

3 Do you agree with that statement, Mr. Humber?

4 MR. CLAYTON: You're asking him if he agrees with
5 each one of the adjectives used by this writer?

6 MS. ANDERSON: I'm asking if he agrees with that
7 statement.

8 THE WITNESS: The entire paragraph numbered 3?

9 BY MS. ANDERSON:

10 Q. No, just the part I read.

11 A. Did you start with the second sentence there?

12 Q. I did.

13 A. I don't agree with it as stated.

14 Q. With what part do you disagree?

15 MR. CLAYTON: Can I ask what relevance any of this
16 is? This is a statement in a document which the witness
17 says he hasn't drafted. It relates to the FTC report, and
18 he has testified at length as to what he found out about
19 the portions of the FTC report at issue in this case, and
20 what he told Mr. Radutzky about it. You are now
21 attempting to try to get him to restate that testimony.

22 MS. ANDERSON: No, Mr. Clayton, he didn't testify
23 that he didn't draft this. He testified that he didn't
24 remember whether or not he had drafted this. He didn't

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1 remember having seen this document before. I think it's
2 relevant to this lawsuit. I don't know when this document
3 was written. I think that one might surmise as to when it
4 was written, but there is no indication on the document
5 itself. So I think I'm entitled to inquire into this
6 witness' recollection and knowledge, and I am so doing.

7 MR. CLAYTON: Well it seems quite unlikely to me if
8 he has testified he doesn't recall seeing the document,
9 and he has testified he does not agree with that
10 statement, it seems quite unlikely to me he drafted it.
11 It's a statement. It's a sentence which is full of
12 adjectives and adverbs which are not his own. And what
13 you're asking him now is to go and pick apart and put in
14 his own words -- and what you're really saying is let's
15 see if we can get him to change the substance of prior
16 testimony. He has testified about all kinds of -- he has
17 testified about the substance of this sentence, and he has
18 told you that he disagrees with the statement.

19 If you want to ask him and take him through
20 exactly which he disagrees with in this statement that
21 apparently someone else wrote, that he does not recall
22 writing himself and which he disagrees, I'm going to
23 direct him not to answer.

24 MR. CLAYTON: Well first of all, Mr. Clayton, we

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1 I don't know that he didn't write it. He didn't testify
2 that he did; he didn't testify that he didn't. His
3 testimony is that he doesn't recall. It could be that his
4 recollection will be refreshed at looking at the series of
5 exhibits marked, beginning with the transcript of the
6 conversation with the reporter, his Deposition Exhibit 8
7 through --

8 MR. CLAYTON: I don't see any reason.

9 MS. ANDERSON: -- Deposition Exhibit No. 11.

10 MR. CLAYTON: I don't see any reason why his
11 recollection would be refreshed by any of those exhibits
12 which we've just gone through and we've just read. I
13 don't see any reason why --

14 MS. ANDERSON: I don't know that you can know what or
15 when or how Mr. Humber's recollection will be refreshed
16 unless you are specifically telling him that his
17 recollection should not be refreshed.

18 MR. CLAYTON: I'm not, but what I'm saying is that
19 after you had asked him about each one of the exhibits
20 you've mentioned, he has read fully and completely each
21 one of the exhibits, and he has read them two minutes ago,
22 and then precisely after reading each of those exhibits,
23 you have asked him does he recall this one after reading
24 8, 9 and 10. That doesn't refresh his recollection.

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1 I don't know what we're going to do. We can't
2 roll up 8, 9 and 10 and hit him in the head with it. He
3 has read it completely. He told you he disagrees with
4 this statement. There is no saying it's his statement. I
5 think the record probably indicates it's not his
6 statement. I don't see how his agreeing or disagreement
7 in a statement in a draft letter to be given to the editor
8 of the London Times in the United Kingdom is relevant to
9 this case.

10 If you want to ask him exactly which ways he
11 disagrees with this statement, I think it's completely
12 irrelevant; I think it's a waste of time, and I also think
13 it's insidious in this his attempt to get him to go over
14 his prior testimony about this subject matter and get him
15 to change it in some way. I'm going to direct him not to
16 answer.

17 MS. ANDERSON: If his testimony changes after his
18 recollection is refreshed, after he looks at different
19 documents, Lew, so be it. I am not an expert in memory.
20 I don't know what triggers one's recollection and what
21 doesn't.

22 MR. CLAYTON: If you want to ask him --

23 MS. ANDERSON: And I am entitled to ask questions the
24 way I see fit. Granted, they may not be beautiful. They

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1 may not be well constructed. As an Indiana farmer's
2 daughter, I have trouble with words from time to time.
3 But if you would just keep your objections and speeches to
4 an absolute minimum, Mr. Clayton, maybe we'll get the
5 witness out of here.

6 MR. CLAYTON: If you wish to ask him if reading
7 Exhibit 11 refreshes his recollection regarding the Ted
8 Bates report regarding his conversations with Mr. Wells,
9 regarding his conversation with Mr. Radutzky. If you want
10 to ask him if it refreshes his recollection, I have no
11 objection. But the question -- you have not put the
12 question, and you are not putting the question, you're
13 asking him --

14 MS. ANDERSON: I'm not interested in his conversation
15 right now with Mr. Radutzky, Mr. Bates, or Mr. Wells; I'm
16 trying to see if his memory is refreshed with respect to
17 the London Times reporter.

18 MR. CLAYTON: Well your question is: In what ways do
19 you disagree with that statement? I don't see how that is
20 refreshing his recollection about the London Times
21 reporter, and I will direct him not to answer that
22 question which is: Tell me every way in which you
23 disagree with that --

24 MS. ANDERSON: I didn't ask that question yet.

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1 MS. CLAYTON: You said in what way did he disagree.

2 MS. ANDERSON: I am getting there, yes.

3 MR. CLAYTON: I'm going to direct him not to answer
4 that.

5 MS. ANDERSON: On what basis, relevance?

6 MR. CLAYTON: I think we have gone through that basis
7 at length. In fact, you told me I spoke so long that I
8 should be quiet, and I should keep my statements to a
9 minimum. That statement was the basis of my objection.

10 I'm going to direct him not to answer that question.

11 BY MS. ANDERSON:

12 Q. Do you accept your counsel's advise not to
13 answer this question?

14 A. Yes.

15 Q. In your opinion, Mr. Humber, did the FTC report
16 slander with Brown & Williamson?

17 MR. CLAYTON: Objection in that you are asking the
18 witness for a legal conclusion which he's not competent to
19 give. Slander is a legal term, and this witness is not a
20 lawyer. And in addition -- strike the addition. I think
21 I've said enough.

22 BY MS. ANDERSON:

23 Q. Mr. Humber, --

24 MR. CLAYTON: I'll direct the witness not to answer

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1 that question.

2 BY MS. ANDERSON:

3 Q. Having examined Humber Deposition Exhibit No.

4 11, and particularly those pages marked 049199, 049200 --

5 A. Wait. 049- --

6 Q. The second draft letter, if you will.

7 A. 9199.

8 Q. 9200.

9 A. Yes.

10 Q. 9201.

11 A. Yes.

12 Q. Is your recollection refreshed at all as to
13 whether or not you had a conversation with the London
14 Times reporter?

15 A. No.

16 Q. Did you, Mr. Humber, draft the document that
17 begins on page 049199?

18 MR. CLAYTON: Objection. Asked and answered. You've
19 asked him directly, did he draft that. He said, "I do not
20 recall." And he has read the entire document.

21 If you want to show him something else to
22 refresh his recollection, I invite you to do so, but don't
23 merely ask the question again five questions later.
24 Please move on.

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1 BY MS. ANDERSON:

2 Q. Is your answer the same: You still don't
3 remember?

4 A. I don't recall.

5 Q. I want to read from the bottom of Page 49200 and
6 the top of 49201 which says, "Ms. Ferriman telephoned
7 Brown & Williamson on March 24 and requested comment of
8 the FTC charges. Mr. Thomas Humber, Assistant Director of
9 Corporate Affairs for Brown & Williamson, accepted the
10 call and agreed to talk with Ms. Ferriman." Is that
11 statement true, Mr. Humber?

12 MR. CLAYTON: Shane, you've asked him: Does he
13 recall speaking. How many different permutations do you
14 want to ask this witness? If you want --

15 MS. ANDERSON: Until I'm certain that his memory is
16 not triggered or his recollection is exhausted.

17 MR. CLAYTON: Then please, rather than saying to him:
18 Is that true or not true, ask him: Does that refresh your
19 recollection?

20 MS. ANDERSON: I want to know if it's true or not.

21 MR. CLAYTON: Well if you want to know if it's true
22 or not, then all you are doing is repeating a question
23 that you asked three questions ago. And I'll direct him
24 not to answer that because I'm not going to have him here,

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1 as we have done time and time and time again today, just
2 answering the same question. If you get a specific
3 answer, which he does not recall, you want to show him
4 another piece of paper and say: Does that refresh your
5 recollection, I don't have the slightest objection; but
6 just don't ask the same question. It's unfair, it's
7 harassment, and I will object. I will direct him not to
8 answer repeated questions.

9 MS. ANDERSON: I am not intending to harass you in
10 any way, Mr. Humber.

11 MR. CLAYTON: Well asking the question repeatedly is
12 harassment.

13 MS. ANDERSON: I'm trying very hard to see if we
14 can't refresh his recollection. It may be that this is
15 not possible to do. I am pointing out a specific part of
16 the document, reading it allowed. Again, I don't know
17 what's going to trigger recall and what isn't.

18 MR. CLAYTON: Well, Shane, he read what was given to
19 him. He read the document entirely. Now if you want to
20 direct him to a specific portion, just to say, "Does this
21 refresh your recollection," that's okay. But if you want
22 to ask the same question time and time again, maybe
23 changing a few words, I'm going to have to direct him not
24 to answer because he has been asked this at least once and

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1 maybe twice.

2 MS. ANDERSON: I didn't ask him if that was true.

3 MR. CLAYTON: You said: Do you recall talking with
4 Ferriman? You mentioned the name Ferriman. He said, "I
5 don't recall." Now you read a statement which says you
6 talked with Ferriman. Is that true? That's the same
7 question.

8 MS. ANDERSON: It has a date. It has particular
9 subject matter.

10 MR. CLAYTON: Ask him if it refreshes his
11 recollection, and I will not object. If you are going to
12 ask the same question again, I will object and direct him
13 not to answer it. I think it's unfair.

14 MS. ANDERSON: It is not unfair, and instructing
15 someone not to answer on the basis of a question you
16 characterize as unfair is, I think, stretching the rules.

17 BY MS. ANDERSON:

18 Q. Nevertheless, Mr. Humber, to get you out of
19 here.

20 Does this refresh your recollection at all that
21 you talked with Ms. Ferriman on March 24?

22 A. It says I did. It does not refresh my
23 recollection.

24 Q. Do you know from what files this document was

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1 produced, Mr. Humber?

2 A. I do not.

3 Q. Do you know where Mr. Wyatt is employed at the
4 present time?

5 A. I do.

6 Q. Where?

7 A. He's vice-president of public policy for B.A.T.

8 Q. In New York?

9 A. In Washington.

10 Q. In Washington. As part of your job
11 responsibility, do you approve or disapprove of
12 advertising placement?

13 MR. CLAYTON: Could you define advertising placement?

14 MS. ANDERSON: Yes.

15 BY MS. ANDERSON:

16 Q. Where advertising appears in what form, in what
17 media, in what product, if you will.

18 A. Not product.

19 Q. How about advertising placement?

20 A. Well I have a responsibility for corporate
21 advertising. So with regard to advertising, that carries
22 the name Brown & Williamson Tobacco Corporation, I do.

23 Q. With respect to advertising for particular
24 brands of cigarettes, do you carry any responsibility for

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1 placement of that type of advertising in particular?

2 A. No.

3 Q. Do you subscribe to the publication "Advertising
4 Age"?

5 A. I do. The department does.

6 Q. Do you read it?

7 A. Rarely.

8 Q. Did you ever submit articles to it?

9 A. No. They don't pay enough.

10 MR. CLAYTON: Don't volunteer.

11 BY MS. ANDERSON:

12 Q. Do you consider "Advertising Age" to be a
13 respectable publication?

14 MR. CLAYTON: Objection. What's the relevance of
15 that?

16 BY MS. ANDERSON:

17 Q. Mr. Humber, --

18 MR. CLAYTON: Before -- Shane, please, if you --

19 MS. ANDERSON: Mr. Clayton, relevance is not a proper
20 objection in a deposition, and it certainly is an improper
21 basis for directing someone not to answer. You, today,
22 don't seem to mind instructing the witness not to answer
23 on any basis; on whim, I would say.

24 MR. CLAYTON: Shane, what I was objecting to is that

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1 I interjected an objection on the record asking you a
2 question so I can make up my mind as to whether I can
3 direct the witness not to answer. If you don't want to
4 answer my question, you can tell me, "I won't answer."
5 But just don't look at the witness and ask another
6 question and barge on through. I'm going to object to
7 that.

8 MR. MASON: Wait a second. In this jurisdiction you
9 don't need relevance to make up your mind whether or not
10 to instruct because instruction on relevance is not
11 permitted in this jurisdiction.

12 In the second place, relevancy, as some judge
13 once put it, Justice Holmes, is a concession to the
14 shortness of life, and, therefore, it is not appropriate
15 to take a longer dialogue than to allow the witness to
16 answer the question.

17 MR. CLAYTON: In a concession to the shortness of
18 life, I would ask again that only one party from the
19 defendants make these statements and objections, and I
20 think it's most appropriate if the party who is paying
21 attention to the deposition and is actually asking the
22 questions would be the person making those objection.

23 MR. MASON: It is very clear that I am paying more
24 attention to the deposition than you are. In the first

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1 place, you spend most of the time writing; and the second
2 place --

3 MR. CLAYTON: What I am writing are notes rather than
4 reading extraneous matter.

5 MR. MASON: It is clear enough from your comments so
6 far today that you have paid only the most remote
7 attention to the deposition.

8 MR. CLAYTON: Thank you.

9 Shane, I was asking for the relevance of that
10 question because I think it may be objectionable. If you
11 can convince me that it's for some reason highly relevant,
12 I'll reconsider my objection.

13 MS. ANDERSON: I'm not here, Lew, to convince you or
14 not convince you as to what is or isn't relevant. I asked
15 the question; I want an answer, and I would ask that the
16 witness answer the question.

17 MR. CLAYTON: And I'd like the question to be read
18 back.

19 (Record read as requested.)

20 MR. CLAYTON: If you understand the question, you may
21 answer it.

22 THE WITNESS: I don't read very much of "Ad Age." It
23 is a trade publication that deals with advertising and
24 ancillary industries. I have seen stories in it of which

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1 I had knowledge. It had factual inaccuracies. I seen
2 others that have been factually correct. I have no way of
3 characterizing it, in your terminology, as a respectable
4 publication or not.

5 MS. ANDERSON: Mark this please as Humber Deposition
6 Exhibit 12?

7 (Exhibit No. 12 marked as
8 requested.)

9 BY MS. ANDERSON:

10 Q. Mr. Humber, let me hand you a copy of a document
11 marked as Exhibit 12 in this deposition. It is a document
12 dated August 2, 1983, at 2:00 p.m. It's indicated to say
13 "Press Query." You were indicated as being one of the
14 recipients of this document. Please look this over.

15 A. I've read it.

16 Q. Did you receive a copy of this document on or
17 about August 2, 1983?

18 A. I believe I did.

19 Q. Now you indicated that Mark Ahearn is in the
20 corporate affairs department, correct?

21 A. That is correct.

22 Q. This document has a press query indication on
23 its face. Is this the new form having gone to work
24 processing?

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1 A. Yes, it is.

2 Q. Did Mr. Ahearn talk to you in August of '83
3 about the advertising of KOOL in a "G"-rated film in the
4 Boston area as indicated in this document?

5 MR. CLAYTON: Shane, I am now going to ask what
6 conceivable relevance this document in this matter has to
7 this suit? You have stated -- the defendants have stated
8 in their court papers that actual malice and truth and
9 other issues that facts and incidents up to March '82 are
10 relevant to that. I see this document is dated "Received
11 August 3, '83." It's dated August 2, 1983. I don't see
12 what it has to do with this case.

13 MS. ANDERSON: You produced it to us.

14 MR. CLAYTON: The fact that we produced it to you
15 among 53,000 documents doesn't mean it has anything to do
16 with this case.

17 MS. ANDERSON: More than a million.

18 MR. CLAYTON: Well 53,000 of the ones -- we did more
19 than a million -- of the ones we made available to you.
20 We made available to you a lot of documents which have not
21 the slightest relevance. And you have collected a lot of
22 documents which have not the slightest relevance. I
23 believe this is one of them, and I would like to know why
24 is this relevant to this case. It's a year after the

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1 transaction at issue here. It's a different brand, a
2 different matter. It's a different state. I don't see
3 what the relevance is.

4 MS. ANDERSON: I think, again, Mr. Clayton, I'm
5 entitled to inquire of this witness as I see fit.

6 MR. CLAYTON: Well there are --

7 MS. ANDERSON: Certain parameters --

8 MR. CLAYTON: That's right. There are certain
9 parameters --

10 MS. ANDERSON: I am full within those parameters. I
11 chose to respond to your inquiry, and I would like a
12 response to mine from the witness.

13 MR. CLAYTON: I'm going to confer -- with your
14 permission I will confer with the witness for a moment and
15 then I'll respond to your question, okay?

16 (Discussion off the record.)

17 MR. CLAYTON: I'm going to direct the witness not to
18 answer your question.

19 MS. ANDERSON: I intend to ask a series -- and your
20 basis is what, Mr. Clayton?

21 MR. CLAYTON: My basis is that as I think defendants
22 themselves have conceded, this area is completely
23 irrelevant, and I think it's an area which without a
24 further showing, there is no need to go into it. I think

1 it's so irrelevant and it's susceptible of unfair
2 prejudice, and for that reason -- unless if the Court
3 orders otherwise, that will be a different story. But at
4 this point I direct the witness not to answer.

5 MS. ANDERSON: All right. I take issue with your
6 characterization of what defendants have or have not done.
7 I had intended to ask Mr. Humber a series of questions and
8 show him several other documents concerning Brown &
9 Williamson advertising in movies.

10 Is your objection to each of those questions
11 going to be -- I mean, is your response to each of those
12 questions going to be a direction to the witness not to
13 answer them on the same basis that you have just given?

14 MR. CLAYTON: I have to see the documents. I can't
15 speak without seeing the documents.

16 MS. ANDERSON: Then I'll mark the documents. No, as
17 a matter of fact, I'm going to mark only one of them --
18 two of them.

19 Mark this please as Humber Deposition Exhibit 13
20 and this one as 14.

21 (Exhibit Nos. 13 and 14 marked
22 as requested.)

23 BY MS. ANDERSON:

24 Q. Let me hand you, Mr. Humber, a copy of the

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1 document that has been marked as Deposition Exhibit 13.
2 This is the memorandum dated October 7, 1983, to a number
3 of persons listed showing a carbon copy to yourself from
4 an R. A. Blott.

5 MR. CLAYTON: The witness has read the document.

6 BY MS. ANDERSON:

7 Q. Do you recall having received this document in
8 the ordinary course of business, Mr. Humber?

9 MR. CLAYTON: You may answer that question.

10 THE WITNESS: I don't specifically recall, no.

11 BY MS. ANDERSON:

12 Q. But you are indicated as having received a copy?

13 A. I am certainly indicated as having received a
14 copy.

15 Q. It is likely that you would have in the ordinary
16 course of business received a memorandum on which a copy
17 is indicated to you, right?

18 A. It is.

19 Q. Who is R. A. Blott?

20 A. Today he's senior vice-president of marketing.

21 Q. What was his title in October of 1983?

22 A. I believe it was the same. He now has
23 responsibilities for domestic and international. I
24 believe at that time he only had responsibilities for

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1 domestic.

2 Q. When you say "marketing," does that encompass
3 all brands?

4 A. Yes, it does.

5 Q. Had you talked with Mr. Blott about
6 advertising, -- about Brown & Williamson advertising in
7 movies before you received this memorandum?

8 MR. CLAYTON: I'm going to direct the witness not to
9 answer that question or other questions about the
10 substance of this memorandum, Exhibit 13.

11 MS. ANDERSON: On what basis, Mr. Clayton?

12 MR. CLAYTON: Same basis.

13 MS. ANDERSON: As you directed him not to --

14 MR. CLAYTON: As to Exhibit 12. Same basis as to
15 Exhibit 12.

16 BY MS. ANDERSON:

17 Q. And are you going to take your counsel's advice,
18 Mr. Humber?

19 A. I am.

20 Q. I'm going to hand you a document that has been
21 marked Defendant's Exhibit 14. This is a memorandum to J.
22 M. Coleman from Tom Humber dated November 8, 1983.

23 MR. CLAYTON: I'll give the similar direction to the
24 witness as to Exhibit 14.

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1 MS. ANDERSON: You're going to direct him not to
2 answer anything about it?

3 MR. CLAYTON: I'll direct him not to answer any
4 questions about the substance of the text of this
5 memorandum.

6 MS. ANDERSON: Well let me ask the witness if he
7 recalls having prepared this document. Will you direct
8 him not to answer that question?

9 MR. CLAYTON: No, he may answer that one.

10 THE WITNESS: I don't recall specifically, but this
11 is my signature, and, yes, I did prepare it.

12 BY MS. ANDERSON:

13 Q. Your counsel has indicated that he will let you
14 answer no questions about the substance of this
15 memorandum, Mr. Humber, so I want to go back for a few
16 minutes to an earlier question I asked you about
17 advertising and advertising placement; and I think your
18 answer was that you had nothing to do with advertising
19 placement. Is that your recollection of your answer?

20 A. I can't recall the exact words I used, but I
21 specified that I have responsibility for corporate
22 advertising, that advertising which is produced by the
23 Brown & Williamson Tobacco Corporation. I do not have
24 responsibility for brand-related advertising.

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1 Q. And does that include whether or not
2 brand-related advertising is placed in cinemas?

3 MR. CLATON: Does what include?

4 MS. ANDERSON: His responsibility or lack thereof for
5 brand-related advertising. He said he has no
6 responsibility for placement of brand-related advertising.

7 BY MS. ANDERSON:

8 Q. Do you understand the question? If you don't,
9 I'll try to rephrase it.

10 A. I understand the question, but the question
11 doesn't have anything to do with this.

6

12 MR. CLAYTON: That's probably right.

13 BY MS. ANDERSON:

14 Q. So whether or not advertising --

15 A. I don't have anything to do with the placement
16 of advertising.

17 Q. Including the placement of advertising in
18 movies?

19 A. That is correct.

20 Q. Do you have anything to do with the approval of
21 advertising that is placed, forgetting for a moment where
22 it might be placed?

23 A. The approval of advertising and where it might
24 be placed?

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1 Q. Prior to it's being placed. Do you understand
2 that question?

3 A. Not in my official capacity, no.

4 Q. In some unofficial capacity?

5 A. It is conceivable that someone in the marketing
6 department would ask me a question regarding the placement
7 of advertising, and I would respond with an answer. It's
8 a personal question and a personal answer, but not any
9 approval process over the placement of advertising.

10 Q. But you wrote in this memorandum, Mr. Humber,
11 that you support the continuation of product placement in
12 movies made for theatrical release; did you not?

13 MR. CLAYTON: I'm going to ask direct him not to
14 answer that question. I think I directed him not to
15 answer questions about the substance of this memorandum.

16 MS. ANDERSON: Or any other questions that go to the
17 substance of what his responsibilities are in terms of
18 advertising for brands in movies, is that right?

19 MR. CLAYTON: No -- well I -- frankly, I am not
20 attempting to throw a monkeywrench into anything, but I
21 don't understand precisely what subject you are getting
22 at. You asked him some questions what his general
23 responsibilities are for corporate advertising and brand
24 advertising. I think he's answered you on those points.

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1 MS. ANDERSON: That's right. And now I'm trying to
2 inquire why all of a sudden the corporate affairs
3 department is supporting the continuation of product
4 placement in movies when earlier Mr. Humber indicated that
5 he has nothing to do with approving or disapproving such
6 placement.

7 You are directing him not to answer?

8 MR. CLAYTON: I'm going to direct him not to answer
9 questions about this cinema advertising program, and the
10 question which you've just sketched out, I believe, falls
11 within that category, and I would direct him not to answer
12 it.

13 BY MS. ANDERSON:

14 Q. Mr. Humber, did you ever look through eight
15 years of Viceroy advertising?

16 A. I did.

17 Q. When?

18 A. I don't recall.

19 Q. Was it after the FTC report was issued?

20 A. That would have been the reason I did it. So
21 it's fair to say that it was after that, yes.

22 Q. Do you know the reason you looked through eight
23 years of Viceroy advertising?

24 A. It would have been to see if there was any

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1 advertising that had been published related to the charges
2 made in the FTC report.

3 Q. And when you looked through the advertising,
4 what determination did you make?

5 A. That there was none that corresponded to any of
6 those charges.

7 Q. Did you ask anyone else at Brown & Williamson
8 for their opinion about such advertising?

9 A. I don't know whether I asked that specific
10 question, but I had discussions with Kendrick Wells about
11 that, yes.

12 Q. Well did you and Kendrick Wells on your own make
13 a determination that there was no advertising that was
14 published by Brown & Williamson that responded to the FTC
15 charges?

16 A. I believe we did.

17 Q. Did you ask anyone in the advertising area about
18 it?

19 A. I did not.

20 Q. Do you know whether Mr. Wells did?

21 A. I don't know.

22 Q. Do you remember how you made this determination?
23 In other words, did you just look at the ads themselves as
24 published and make a value judgement that this did or did

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1 not reflect the charges against Brown & Williamson?

2 A. I dia.

3 Q. By the way, what does a published ad mean to
4 you?

5 A. An ad that has appeared in a magazine.

6 Q. Or any publication?

7 A. Or any publication, yes.

8 Q. You testified earlier that you had discussed
9 with people at Brown & Williamson this lawsuit before it
10 was filed. With respect to the perspective that was
11 broadcasted by WBBM, that's the subject of this lawsuit,
12 did you discuss with anyone at Brown & Williamson whether
13 or not a response to that perspective by Brown &
14 Williamson should be requested?

15 MR. CLAYTON: Other than conversations with counsel
16 regarding legal advice?

17 MS. ANDERSON: Even conversations with counsel
18 because that's subject matter, Mr. Clayton, not substance,
19 and I don't think that falls within the area that's
20 protected by attorney-client privilege.

21 MR. CLAYTON: Okay. I'll allow him to answer that
22 question. Would you ask him again, please?

23 (Record read as requested.)

24 THE WITNESS: Would you clarify what you mean by

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1 "response should be requested"?

2 BY MS. ANDERSON:

3 Q. Yes.

4 Did you discuss whether or not Brown &
5 Williamson should ask for a retraction buy WBBM?

6 MR. CLAYTON: Now I'm going to have to limit that to
7 counsel -- I mean, to discussions which don't pertain to
8 counsel because if you say, you know, did you discuss --
9 when you discuss a response, you're saying essentially,
10 well did anyone say is there something that we should do?
11 Was that a product topic?

7

12 MS. ANDERSON: But you didn't understand the
13 question. I was trying to make it more specific and
14 clarify it.

15 MR. CLAYTON: I understand that, and I don't mean by
16 my statement to indicate one way or another what happened
17 in any discussions with counsel. Now if he does respond
18 and he does say, "Yes, I discussed with counsel whether a
19 retraction ought to be made," that's a specific form of
20 response, and it gets into the substance of communications
21 with counsel. So I'm afraid you may have attempted to
22 clarify it, but you've done it by being too specific,
23 however. And the answer to that, yes or no, and was that
24 discussion made with counsel would get into privilegea

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1 communications.

2 MS. ANDERSON: Well, shouldn't you find out what the
3 answer is going to be to my question before you make the
4 objection?

5 I'll let you confer with your client if you
6 wish.

7 MR. CLAYTON: I mean, if you want that question to
8 pena, and you're willing to limit that question to
9 discussions which don't pertain to counsel, I mean, I will
10 discuss with my client and see if we can give you an
11 answer here.

12 MR. CLAYTON: Why don't you do that?

13 (Discussion off the record.)

14 MR. CLAYTON: I'll allow him to answer.

15 MS. ANDERSON: What I'm trying to get at here is the
16 substance of any conversation that he recalls on the
17 question of any action Brown & Williamson was thinking of
18 taking in response to the Viceroy perspective, which
19 conversations were not privileged and did not have counsel
20 present.

21 MR. CLAYTON: And I suggest if you ask him that
22 question, he can give you an answer there and we can
23 exclude conversations on the topic of some action or
24 response by Brown & Williamson which had counsel present,

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1 and he can give you his recollection as to conversations
2 which were not held with counsel.

3 MS. ANDERSON: All right. Then let's back up to my
4 question which he didn't --

5 MR. CLAYTON: Right.

6 MS. ANDERSON: -- understand to which I wanted
7 clarification.

8 MR. CLAYTON: Right. Maybe if we define it as
9 response, you know, some action that the company might
10 take in response or reply to the Viceroy perspective.

11 MS. ANDERSON: Well action or inaction.

12 MR. CLAYTON: Action, inaction, or any course of
13 action or inaction.

14 MS. ANDERSON: Right. Okay.

15 BY MS. ANDERSON:

16 Q. Now did you follow all that, Mr. Humber?

17 Do you recall having discussions with anyone at
18 Brown & Williamson concerning a response that Brown &
19 Williamson might consider making to the Viceroy
20 perspective that's the issue in this lawsuit?

21 A. I don't recall the specifics of those, but, yes,
22 I recall conversations.

23 Q. With whom did you have such conversations?

24 A. Hendrick Wells, Earnie Peoples,

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1 Q. Mr. Wells is a lawyer, right?

2 A. Yes.

3 Q. Mr. Peoples is a lawyer, right?

4 A. Yes. Dr. Hughes. Those would be the people I
5 can recall.

6 Q. Was each of those persons -- strike that.

7 Was a lawyer always present during such
8 conversations?

9 A. Best I can recall, yes.

10 Q. So you and Dr. Hughes had no discussion
11 concerning a course of action or no course of action
12 without a lawyer being present, is that right?

13 A. I don't recall any such conversations, no.

14 Q. And the subject -- strike that.

15 Do you recall how many such conversations you
16 had?

17 A. I do not.

18 Q. Or when they took place?

19 A. I do not.

20 MR. CLAYTON: Shane, these are privileged
21 communications, what are you trying to get at? I mean --

22 MS. ANDERSON: I'm just trying to lay a foundation to
23 see if they are privileged.

24 MR. CLAYTON: But how many and when it took place

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1 doesn't lay the foundations for privilege. It's
2 irrelevant.

3 MS. ANDERSON: Let me get on with my questioning, it
4 you please?

5 MR. CLAYTON: Okay.

6 BY MS. ANDERSON:

7 Q. You said you didn't recall how many? You didn't
8 recall when, right?

9 A. I said that, yes.

10 MR. CLAYTON: How does that lay a foundation for
11 privilege? I don't understand what you're getting at.

12 MR. GINSBERG: Lew, let her ask the questions.

13 BY MS. ANDERSON:

14 Q. Mr. Humber, was the subject matter of each of
15 these conversations considered a Brown & Williamson --
16 conversation of Brown & Williamson's response to the
17 Viceroy perspective?

18 MR. CLAYTON: Objection. Asked and answered because
19 you've been asking him about conversations.

20 MS. ANDERSON: No, I think I asked about it once, and
21 he has testified that there are more than one. I was
22 trying to find out how many. When they took place he
23 doesn't remember. But to the extent that there was more
24 than one conversation, I just want to pin down that they

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1 were all about a response or lack of response to be taken
2 by Brown & Williamson with respect to the Viceroy
3 perspective.

4 MR. CLAYTON: You're inquiring now, as I understand
5 it; about conversations that he had with Brown --

MS. ANDERSON: He told me that all conversations --

7 MR. CLAYTON: Correct.

8 MS. ANDERSON: -- that he recalls counsel was
9 present.

10 MR. CLAYTON: All right.

11 You may answer that question.

12 THE WITNESS: What is it?

13 (Record read as requested.)

14 MS. ANDERSON: Do you want me to rephrase the
15 question, then I'll move on, all right?

16 BY MS. ANDERSON:

17 Q. You have testified that there were several
18 conversations with counsel present. You don't remember
19 when or how many or where?

20 A. That is correct.

21 Q. With respect to what action or inaction Brown &
22 Williamson could or should take to the Viceroy
23 perspective, right?

34 A That is correct.

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1 Q. Did you have any conversations with anyone at
2 the Tobacco Institute concerning the Viceroy perspective?

3 A. I don't believe I did.

4 Q. Were you present when anyone at Brown &
5 Williamson had a conversation with anyone at the Tobacco
6 Institute concerning the Viceroy perspective?

7 A. I cannot recall any such presence, no.

8 Q. Do you know what the relationship is between
9 Brown & Williamson in the Tobacco Institute?

10 A. It's a member.

11 Q. Brown & Williamson is a member?

12 A. Brown & Williamson is a member of the Tobacco
13 Institute. Tobacco Institute is a trade association.

14 Q. Brown & Williamson provides funds to the Tobacco
15 Institute, right?

16 A. That is correct.

17 Q. Do you know what amount all funding is provided
18 every year by Brown & Williamson to the Tobacco Institute?

19 MR. CLAYTON: When you say "funding," does that
20 include dues?

21 BY MS. ANDERSON:

22 Q. Including everything.

23 A. I do not, no.

24 Q. Who would know that?

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1 A. Somebody in finance in Brown & Williamson would.

2 Q. Has anyone at Brown & Williamson told you of any
3 communication he or she had with the Tobacco Institute
4 concerning the Viceroy perspective?

5 A. I cannot recall a conversation. I have a memory
6 of knowledge that the Tobacco Institute was going to
7 respond in some way, but I don't know how I came about
8 that knowledge.

9 Q. Do you know -- do you have any memory as to
10 whether or not the Tobacco Institute did respond in any
11 way to the Viceroy perspective?

12 A. I don't recall.

13 Q. With respect to the FTC report, did Brown &
14 Williamson file any comments about the report with the
15 FTC?

16 MR. CLAYTON: If you know.

17 THE WITNESS: I don't recall.

18 BY MS. ANDERSON:

19 Q. Had Brown & Williamson chosen to file comments
20 with the FTC, in whose area of responsibility, Mr. Humber,
21 would that have fallen?

22 A. The law department.

23 MS. ANDERSON: Would you mark this, please, as Humber
24 Deposition Exhibit 15?

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1 (Exhibit No. 15 marked as
2 requested.)

3 BY MS. ANDERSON:

4 Q. Let me hand you a copy of a document I have had
5 marked as Exhibit 15. This is an article -- copy of an
6 article from the Louisville "Courier Journal," dated
7 Sunday, June 12, 1983.

8 Have you seen a copy of this article before
9 today, Mr. Humber?

10 A. Without reading it all, yes, I have seen a copy.

11 Q. Did you see it about the time it was published?

12 A. About the time it was published, yes.

13 Q. Did you keep a copy of this article in your
14 clippings file?

15 A. In the department I would assume. I don't know.

16 Q. In the second column of this article, Mr.

17 Humber, a Brown & Williamson Tobacco Corporation marketing
18 employee is quoted. Do you know the identity of that
19 Brown & Williamson employee?

20 A. I do not.

21 Q. Do you know whether anyone at Brown & Williamson
22 took any steps to find out the name of that employee?

23 A. I do not.

24 Q. Did you take any such steps?

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1 A. I did not.

2 Q. Did you have a conversation with Mr. Mike King
3 of the "Courier Journal" before this article was
4 published?

5 A. I can't recall.

6 Q. Do you recall having spoken to a reporter from
7 "The Christian Science Monitor" about the FTC report?

8 A. I recall a conversation with a reporter from
9 "The Christian Science Monitor," but I do not recall the
10 subject matter.

11 MS. ANDERSON: Would you mark this as Deposition
12 Exhibit 16?

13 (Exhibit No. 16 marked as
14 requested.)

15 BY MS. ANDERSON:

16 Q. By the way, do you recall having read an article
17 in "The Christian Science Monitor" about the FTC report?

18 A. I don't recall, no.

19 (Exhibit No. 16 marked as
20 requested.)

21 BY MS. ANDERSON:

22 Q. Let me hand you a copy of a document that we
23 have marked as Deposition Exhibit 16. You will note that
24 this is a copy of an article that has been retrieved from

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1 a publication called or -- a service called Lexis.

2 I'd ask you to read this, Mr. Humber. I'm going
3 to have a couple of questions for you.

4 A. I've read it.

5 Q. Do you recall having read a copy of this article
6 as it appeared in "Christian Science Monitor"?

7 A. No, I don't.

8 Q. Does this article refresh your recollection
9 about having talked -- about when you talked to a reporter
10 from "The Christian Science Monitor"?

11 A. Other than the fact that it's dated May 6, 1983,
12 no.

13 Q. Do you recall whether you sent a written
14 statement to "The Christian Science Monitor" reporter?

15 A. I don't recall, no.

16 Q. Did you write a press query memorandum about
17 your conversation with "The Christian Science Monitor"
18 reporter?

19 A. Since I can't recall the conversation, I
20 certainly can't recall writing it, no.

21 Q. Mr. Humber, to your knowledge has Viceroy
22 advertising ever been designed to attract new smokers?

23 MR. CLAYTON: Shane, I'm going to have to object on
24 the basis of the Court's -- and again, you are, and it

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1 seems to me, just repeating words which the Court said are
2 not supposed to be discoverable.

3 The Judge says -- let's me quote from the Reuben
4 & Proctor pleading file, March 19, 1984, "At this point in
5 time in absence of additional showing, the Court does not
6 regard the following matters as the subject of discovery."
7 Then one matter is set forth, and the second matter,
8 "meaning Brown & Williamson's advertisements are designed
9 to attract new smokers." On that basis I'll direct the
10 witness not to answer that question. That's not a subject
11 of discovery. The Court has explicitly ruled.

12 I direct the witness not to answer.

13 BY MS. ANDERSON:

14 Q. Do you take your counsel's advice, Mr. Humber?

15 A. I do.

16 MS. ANDERSON: Let me have a short conference?

17 (Discussion off the record.)

18 MS. ANDERSON: Mr. Clayton, I'd like to state for the
19 record that I would like you to produce the research
20 documents about which Mr. Humber testified that indicate
21 the effect of advertising is to cause smokers to change
22 brands, not to attract new smokers. We requested such
23 information within the scope of our request, and I would
24 like that produced.

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1 MR. CLAYTON: I disagree it's within the scope of the
2 document responses which we've agreed to provide when we
3 were doing document production. I think it's outside that
4 request. I will take what I believe to be a new request
5 for documents under advisement.

6 BY MS. ANDERSON:

7 Q. Mr. Humber, with respect to Viceroy advertising,
8 are you aware whether such advertising is targeted at
9 certain specific age groups?

10 A. I am not.

11 Q. Have you ever told a reporter that Brown &
12 Williamson does not advertise to teenagers?

13 A. I have.

14 Q. What is the youngest age to which Brown &
15 Williamson does advertise?

16 A. I cannot answer that question specifically. I
17 simply do not know.

18 Q. When you say Brown & Williamson does not
19 advertise to teenagers, that means anyone up through 19,
20 is that correct?

21 A. That would be my definition of a teenager, yes.

22 MS. ANDERSON: Given the objections and the
23 instructions not to answer, I'm not going to terminate or
24 call a halt or consider this deposition finished. I have

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1 at the moment know further questions. However, I will
2 seek a ruling to consider whether -- to seek the Judge's
3 consideration of whether or not these objections and
4 instructions were proper, and at such time as the Judge
5 rules, then we may or may not, depending on his ruling,
6 continue the deposition.

7 MR. CLAYTON: I have no question of this witness at
8 this time.

9 AND FURTHER DEPONENT SAITH NOT

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

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BROWN & WILLIAMSON TOBACCO)
CORPORATION,)
Plaintiff,)
vs.) No. 82 C 1648
WALTER JACOBSON and)
CBS, INC.)
Defendants.)

I, THOMAS HUMBER, state that I have read the foregoing transcript of the testimony given by me at my deposition on the 9th day of July, 1984, and that said transcript constitutes a true and correct record of the testimony given by me at said deposition except as I have so indicated on the errata sheets provided herein.

THOMAS HUMBER

No corrections (Please initial) _____
Number of errata sheets submitted _____ (pgs.)

SUBSCRIBED AND SWORN to
before me this _____ day
of _____, 1984.

NOTARY PUBLIC

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VICTORIA COURT REPORTING SERVICE, INC.

1 STATE OF ILLINOIS)
2) SS.
2 COUNTY OF C O O K)

3 We, KIMBERLY R. WINKLER and LISA A. KOTRBA,
4 notaries public within and for the County of Cook and
5 State of Illinois, do hereby certify that heretofore,
6 to-wit, on the 9th day of July, 1984, personally appeared
7 before us Thomas Humber, a witness in a certain cause now
8 pending and undetermined in the United States District
9 Court, wherein Brown & Williamson Tobacco Corporation is
10 the plaintiff and Walter Jacobson, et al., are the
11 defendants.

12 We further certify that the witness was by us
13 first duly sworn to testify the truth, the whole truth and
14 nothing but the truth in the cause aforesaid; that the
15 testimony then given by the said witness was reported
16 stenographically by us in the presence of said witness and
17 afterwards reduced to writing, and the foregoing is a true
18 and complete transcript of the testimony so given by the
19 said witness as aforesaid.

20 The signature of the witness to the foregoing
21 deposition was reserved.

22 We further certify that the taking of this
23 deposition was pursuant to notice, and that there were
24 present at the taking of said deposition the appearances

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1 as heretofore noted.

2 We further certify that we are not counsel
3 for nor in any way related to any of the parties to this
4 suit, nor are we in any way interested in the outcome
5 thereof.

6 IN TESTIMONY WHEREOF, we have hereunto set
7 our hands and affixed our notarial seals this 11th day of
8 July, 1984.

9

10

11

Kimberly R. Winkler
Notary Public, Cook County, IL

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Lisa A. Kotrla
Notary Public, Cook County, IL

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